

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-18559-2021 (O&M)

Date of Decision:- 25.2.2022

Nonso @ Nouseo

... Petitioner

Versus

UT, Chandigarh

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Ashish Pal Kaushal, Advocate for the petitioner.

Mr. Rajiv Vij, Addl. P.P. U.T., Chandigarh.

(proceedings conducted through video conferencing)

GURVINDER SINGH GILL, J.

1. The petitioner seeks grant of regular bail in a case registered against him vide FIR No. 463 dated 24.12.2019 under Sections 419, 420 IPC and Section 14 of the Foreigners Act, 1946 at Police Station Sector 39, Chandigarh.
2. It is the case of prosecution that on 24.12.2019 when a police party was patrolling in the area of Section 39-D, Chandigarh, a foreigner (boy) was seen coming from Sector 56 and who upon noticing the police party turned back and tried to escape. However, the police officials apprehended the said boy who tried to throw away a polythene packet taken out from the right pocket of his blue coloured jeans. Upon inquiry, the said boy disclosed his name as Nouseo son of Ogwurumba, resident of Village Uli, State Anmbra, Nigeria. The said boy was neither speaking proper English nor proper Hindi. Upon checking the polythene packet held in his right hand, the same

was found to contain 'heroin', which upon weighment was found to weigh 265 grams.

3. The learned counsel for the petitioner has submitted that the petitioner has falsely been implicated in the present case and that in any case the alleged recovery is marginally above the recovery prescribed as 'commercial quantity, therefore, the petitioner deserves to be given the concession of bail, particularly keeping in view the fact that he has been behind bars for a substantial period of 2 years and 2 months.
4. On the other hand, the learned State counsel has vehemently opposed the petition on the ground that it is a case where the petitioner was caught red handed while in possession of a 'commercial quantity' of contraband. The learned State counsel, while referring to his reply, has further pointed out that in the instant case, a passport recovered from the petitioner i.e. passport No. A09854221 bearing VISA No. V17609543, upon verification was found to be a forged passport and the VISA number was found to have actually been issued to one Bangladesh national namely Shahbuddin Ahmad against his passport No. AB0211289. It has, thus, been submitted that keeping in view such like conduct of the petitioner, there is every likelihood that the petitioner would flee from justice with the help of some forged documents.
5. I have considered rival submissions addressed before this Court.
6. It is not in dispute that the contraband allegedly recovered in the present case i.e. 'heroin' weighing 265 grams would fall in the category of 'commercial quantity'. The petitioner was caught red handed while in possession of the same and for which he could not furnish any justifiable explanation. Further, the fact that the petitioner was found in possession of

a forged passport against which a forged VISA was shown to have been issued, which actually had been issued to somebody else, the same would certainly lead to a belief that the petitioner, in case released on bail, would flee from the country.

7. Even otherwise, the recovered quantity of contraband which falls in the category of ‘commercial quantity’ would attract fetters imposed by Section 37 of the Act in the matter for grant of bail. Hon’ble Apex Court in a recent judgment i.e. 2020(1) RCR(Criminal) 818 State of Kerala vs. Rajesh Kumar has reiterated the legal position as regards the limitations imposed by Section 37 of the Act and has further held that a liberal approach in matters of bail in offences under NDPS Act is uncalled for. There is nothing on record at this stage from which it could be inferred that the petitioner is not guilty of the offence in question. As such, no case is made out for grant of bail to the petitioner. The petition is sans merit and is hereby dismissed.

25.2.2022

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No