

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

CRM-M-49499 of 2021

DATE OF DECISION :- February 14, 2022

Loua Gilbert @ Obiwula

...Petitioner

Versus

State (U.T. Chandigarh)

...Respondent

CORAM: HON'BLE MR. JUSTICE H.S. MADAAN

Present:- Mr. Amit Sharma, Advocate for the petitioner.

Mr. Abhinav Gupta, Addl. P.P., U.T. Chandigarh.

This is the third petition for regular bail filed by petitioner Loua Gilbert @ Obiwula, son of Obiora. aged 33 years, resident of Nawada, Near Piller No. 695, New Delhi & H.No. 23, Anand Vihar, Uttam Nagar, W/Delhi; Permanent address Zuenoula Republic of Cote D' Ivoire Country of West Africa, an accused in F.I.R. No. 441 dated 5.12.2019, registered with Police Station Sector 39, Chandigarh, for offences under Section 21 of the NDPS Act and 419 of Indian Penal Code and 14 of Foreigners Act.

Briefly stated the facts of the case as per prosecution story are that on 5.12.2019 at about 4.30 P.M., in the area near premises of Directorate Cultural Affairs, Archeology Museum, Archives Punjab Government building within jurisdiction of Police Station Sector 39, Chandigarh, the petitioner was spotted coming on foot on the cycle track from the side of dividing road, Sector 38 A/B, Chandigarh. On observing the police party, he got nervous and tried to turn back. In the process, he threw away white polythene bag, having contents after taking it out from

right pocket of his Jeans Pant, black in colour, which he was wearing at that time. He was apprehended by the police party on suspicion and the polythene bag on being checked was found to contain heroin. The petitioner was accordingly arrested in this case. The recovered contraband was seized.

Formal F.I.R. in the matter was registered. The case was investigated. It is the case of the prosecution that the petitioner had tried to conceal his identity and had wrongly given his name and country of origin but from perusal of his Passport, his identity came to be known as Loua Gilbert @ Obiwula, son of Gilbert, resident of Zuenoula Republic PF Cote D'Ivoire situated in West Africa. While on being apprehended by the police party, he had given his name as Obiwula, a citizen of Nigeria. The offences under Sections 419 of Indian Penal Code and 14 of Foreigners Act were added in the F.I.R. On completion of investigation, challan against the accused has since been filed and pending trial. The petitioner had approached the Court of Sessions at Chandigarh for grant of bail but was unsuccessful. He had knocked at the door of this Court earlier on two occasions seeking similar relief, which was not granted to him and he had withdrawn those two petitions. Now he is before this Court for the third time seeking regular bail, which is being opposed by the State counsel vehemently.

I have heard learned counsel for the petitioner and learned State counsel besides going through the record.

Admittedly, the recovered contraband from the petitioner amounts to non-commercial quantity. In that way, bar of Section 37 of the NDPS Act is not affected. As per the custody certificate dated 12.2.2022 placed on record by the State counsel, the petitioner is in custody for a

period of 2 years 2 months and 4 days. He is not shown to be involved in any other criminal case. As stated by counsel for the petitioner and affirmed by the learned State counsel on instructions from SI Mandeep Singh, during the trial the prosecution has examined two PWs so far, whereas 7 PWs have been given up and 6 PWs remain to be examined. The next date of hearing in the trial Court is said to be 8.3.2022. Since the functioning of the Courts has been adversely effected on account of outbreak of third wave of Covid 19 and the conclusion of trial is likely to take considerable time, I find that the petitioner deserves to be granted concession of regular bail, pending trial though by putting requisite terms and conditions to address the apprehension of learned State counsel that petitioner may try to abscond after getting regular bail.

Therefore, the petition is hereby allowed. Petitioner Loua Gilbert @ Obiwula is ordered to be released on bail pending trial on his furnishing bail bond and surety bond to the satisfaction of the learned trial Court/CJM/Duty Magistrate, Chandigarh. The surety bond be got furnished from a local surety having documentary proof of immovable property situated at Chandigarh of the value of more than that of the surety amount.

Further terms and conditions are as follows :-

- (i) that the petitioner shall appear in the Court on each and every date of hearing.
- (ii) he shall not give any threat or intimidation to the prosecution witnesses.
- (iii) He would not seek return of his Passport, which is in custody of the police.
- (iv) he shall not indulge in any criminal activity.
- (v) he shall get his presence marked at Police Station Sector 39, Chandigarh on every Saturday of the week between 11.00 A.M. to 2.00 P.M. so that an

eye can be kept on his movements and he is deterred from indulging in any criminal activity.

- (vi) He shall furnish his mobile number to the police and he would not switch off at any moment so that the local police can keep track of his movements.
- (vii) that he shall not leave the jurisdiction of Chandigarh city without prior permission of the Court.

In case the petitioner violates any term and condition on which the bail has been granted to him, the prosecution would be entitled to apply for cancellation of bail.

(H.S. MADAAN)
JUDGE

February 14, 2022
p.singh

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No