



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on : 12.01.2022

Pronounced on : 19.04.2022

+ **BAIL APPLN. 2619/2019**

FESTUS CHUKWUDI ODOM

..... Petitioner

Through: Mr. J.S. Kushwaha, Adv.

versus

NCB

.... Respondent

Through: Mr. P.C. Aggarwal, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

RAJNISH BHATNAGAR, J.

1. The present bail application has been filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in case No. SC/30/18 U/s 8(C) & 21 (B) of the NDPS Act pending before the Court of Ld. Special Judge, NDPS, New Delhi.

2. Briefly stated, the facts of the present case are that on 04.08.2018, on the basis of a secret information, the present petitioner was intercepted near Dabri More, New Delhi and during his search 95



Grams of Heroin and 24 Grams of Cocaine was recovered from his possession which was to be delivered by him to some other person.

3. I have heard Ld. counsel for the petitioner, Ld. counsel for the respondent (NCB), perused the Status Report and also perused the records of this case.

4. It is submitted by the Ld. counsel for the petitioner that the petitioner has been falsely implicated in the present case. He further submitted that nothing suspicious was recovered from the body of the petitioner and the alleged contrabands were recovered from the bag carried by the petitioner. He further submitted that the alleged recovered contrabands i.e. 95 grams of heroin and 24 grams of cocaine are less than the commercial quantity. He further submitted that as the alleged recovery of contrabands is more than the small quantity but less than the commercial quantity, as specified in the NDPS Act, the embargo of Section 37 of NDPS Act is not attracted in the present case. He further submitted that the mandatory provision of Section 50 of the NDPS Act have not been complied. He further submitted that the petitioner is a 35 years old man having clean antecedents and he is in J.C. since 05.08.2018.

5. Ld. counsel for the petitioner has relied upon the following judgments:



- (a) Nikesh Tarachand Shah Versus Union of India & Anr. (Writ Petition (criminal) No. 67 of 2017.
- (b) Sandeep Kumar Versus Central Bureau of Narcotics (CRL.A. 462/2016) decided on 08.07.2019 by this Court.
- (c) Arif Khan @ Agah Khan Vs. State of Uttarakhand Crl. APP No. 273/2007 decided on 27.04.2018.
- (d) Deepak Singh Vs. State, Bail Application 1854/2017 decided by this Court.
- (e) Anwar Ali Vs. State of Chhattisgarh (2008) 16 SCC 501.
- (f) Dataram Singh Vs. State of Uttar Pradesh & Anr. Criminal Appeal No. 227/2017.

6. On the other hand, while opposing the bail application, it is submitted by the Ld. counsel for the respondent (NCB) that the petitioner in his statement recorded U/s 67 of the NDPS Act admitted his involvement in the present case. He further submitted that the contrabands allegedly recovered from the petitioner are individually less than the commercial quantity but petitioner has committed a serious offence under NDPS Act. He further submitted that petitioner arrived in India on 02.11.2013 on a medial Visa for a short time but he did not go back to his country neither he get renewed his visa. He further submitted that the petitioner is a foreign national and member of

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international drug syndicate and there is every possibility of his evading the trial and he may commit the offence again in future, in case released on bail. He further submitted that the petitioner is involved in a serious case of drug trafficking and there are number of judgments of the Hon'ble Apex Court, wherein it has been repeatedly held that the drug peddlers should be dealt strictly. He prays for the dismissal of the bail application.

7. As far as the contention of the counsel for the petitioner that while issuing notice U/s 50 of the NDPS Act, the mandatory provisions of Section 50 NDPS Act have not been followed, this contention is liable to be rejected as it relate to violation of the procedural aspects which can only be looked into during the course of trial and cannot be deeply analyzed at the stage of bail.

8. In the present case, the petitioner is in J.C. since 05.08.2018. The investigation has been completed and the charge sheet has already been filed. No further recovery is to be effected from the petitioner and he is no longer required for investigation purposes. The trial would take a long time to conclude and no fruitful purpose would be served by keeping the petitioner in J.C. Moreover, the alleged recovered contrabands i.e. 95 grams of heroin and 24 grams of cocaine are individually intermediate quantity and nothing has been brought on record to show that the petitioner has past criminal antecedents or has



been involved in drug trafficking. As far as the contention of the Ld. counsel for the respondent (NCB) that the petitioner is a foreign national and he may not be available for trial in case he is released on bail, this contention can be taken care of by putting stringent conditions on the petitioner.

9. Therefore, in view of the submissions mentioned hereinabove and considering the period of incarceration and the fact that the recovery of contrabands were individually of intermediate quantity, the bail application stands allowed and the petitioner is admitted to bail on his furnishing a personal bond in the sum of Rs. 50,000/- with one surety in the like amount to the satisfaction of concerned trial court subject to the following conditions:

1. The petitioner shall provide his mobile phone number to the Investigating Officer (IO) concerned – at the time of release, which shall be kept in working condition at all times. The petitioner shall not switch-off, or change the same without prior intimation to the IO concerned, during the period of bail;
2. The petitioner shall provide his residential address to the Investigating Officer (IO) concerned – at the time of release. The petitioner shall not change the same without prior intimation to the IO concerned, during the period of bail;
3. The petitioner shall mark his attendance to the SHO/IO concerned and keep him informed of his whereabouts every



Friday between 11:00 A.M. to 11:30 A.M. and between 5:00 P.M. to 6:00 P.M. through video call and if a video call is not possible, he may send SMS apropos his whereabouts, as well as “drop-a-pin” on location app to indicate his location. The IO’s telephone number shall be provided to the learned counsel for the petitioner;

4. The petitioner shall not leave the NCT of Delhi without the prior permission of the concerned trial court.;
5. The petitioner shall not indulge in any criminal activity during the bail period.
10. The bail application stands disposed of in the aforesaid terms. Pending applications, if any, are also disposed of accordingly.
11. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of the case.

RAJNISH BHATNAGAR, J

APRIL 19, 2022

Sumant