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

% *Order pronounced on 19.07.2022*

+ BAIL APPLN. 1776/2022

FRANCES EMODI @ BABA@ AMANZE AUGUSTUS

..... Petitioner

Through: Mr. Arun K. Srivastava and
Ms. Shahina Praveen, Advocates.

versus

STATE GOVT. (NCT OF DELHI)

..... Respondent

Through: Ms. Meenakshi Chauhan, APP for
State with SI Vishan Kumar,
Narcotics Cell, Crime Branch.

CORAM:

HON'BLE MR. JUSTICE TALWANT SINGH

Talwant Singh, J.:

1. The petitioner has prayed for grant of regular bail. It is stated that he was arrested by the Crime Branch police on 25.07.2020 U/s 21/25 of the NDPS Act, Section 14 of the Foreigners Act 1946, Section 12 of the Passport Act, & 467/468/471 IPC and he is in judicial custody since then. Charge-sheet has been filed.

1.1 As per the petitioner he is innocent and has been falsely implicated in the present case. The search and seizure proceeding are vitiated as the same was not conducted in the presence of an independent witness and is not in consonance with Section 50 of the NDPS Act. The sample was not drawn at the spot, rather the same was drawn on 29.07.2022 before learned SDM,



Hauz Khas, Delhi in the absence of the petitioner and the possibility of tampering with the same is not ruled out. The report of FSL is still awaited.

1.2 The alleged recovery of the substance is of intermediate quantity. No such contraband was recovered during house search of the petitioner and he has no contact with any person dealing in drugs.

1.3 The petitioner is in jail since 25.07.2020 and the trial will take a long time, hence the petitioner may be granted bail as he is not a previous convict and there is no chance of his fleeing from justice or repeating the offence.

1.4 The Trial Court has dismissed the bail application on 01.04.2022, hence the petitioner has prayed for grant of bail before this Court.

2. The status report has been filed by the State mentioning therein that on 24.07.2020 a secret information was received by SI Ravi Saini that one person, namely, Baba is indulging in supply of *Heroin* in Delhi. The raiding team was constituted and trap was laid. Thereafter the present petitioner was apprehended from a street near Dalip Shoes, D Block Krishna Park, Devli Road, Khanpur, Delhi. He voluntarily led the police party to his residence, i.e. A-3, 2nd Floor Jawahar Park, Devli Road, Delhi. After opening the lock of his rented flat, he took out one white coloured transparent polythene pouch and the said pouch was containing brown coloured powdery substance, which was tested through Field Testing Kit and it was weighed through electronic weighing machine and it was found to be containing 100 grams *Heroin*. Polythene pouch was converted into pullanda, sealed and seized. The said pullanda was deposited in the *Malkhana* of Police Station Crime Branch Delhi after compliance under Section 55, NDPS Act.

2.1 The process of drawing of sample under Section 52A of NDPS Act was done by learned SDM, Saket Court on 30.07.2022 and the sample had



been deposited with the FSL for analysis. The result has been obtained and it is found to be positive.

2.2 The accused was arrested. He revealed his nationality as a resident of Ghana and produced his original passport. However, the High Commission of Ghana has given a report that the passport is fake. The petitioner was re-interrogated in Tihar Jail where he revealed his true name and him being a resident of Nigeria. He got the Ghanaian passport prepared through an agent from his country Nigeria. He came to India on 31.12.2018 using the fake passport and has been staying in India since then and got his Visa extended several times. Section 14 of Foreigners Act and Section 12 of Passport Act as well as Section 467/468/471 IPC were also invoked in the case. Charge-sheet has been filed and the charges under Section 21 (C) NDPS Act, Section 471 IPC and Section 12 of Passport Act as well as Section 14 of the Foreigner Act have been framed against the petitioner. The case is at the stage of evidence and the first witness has already been examined in the matter.

3. The prosecution has opposed the bail on the grounds that petitioner is involved in heinous crime of drug supply; recovery of contraband *Heroine* was made from him; he is a Nigerian national, who has used a fake name and passport; the petitioner cannot stay in India, if he is released on bail as he will have to be deported to his native place though his presence is required during trial; the petitioner has misguided the Investigating Agency by giving his fake passport; he travelled to India through a fake passport and has been residing in India from 31.12.2018. The allegations are serious in nature, the petitioner has no permanent address in India and there is every possibility that he will jump the bail.



4. I have heard the arguments of both sides.

5. In the present case, the petitioner was arrested on 25.07.2020 after recovery of 100 grams *Heroine* from a polythene pouch produced by him, which was lying in an almirah in a room under his lock and key. The contentions raised by the learned counsel for the petitioner for grant of bail are that the quantity recovered is intermediate; the recovery was not made from the petitioner rather the same was made/recovered from the premises; there is no compliance of Section 50 of NDPS Act and Section 100(4) of Cr.P.C.; nobody from the neighbourhood was joined at the time of recovery and no search warrant was obtained.

5.1 It has been submitted that the notice under Section 50 of NDPS was given after the search and seizure. The same was not drawn at the spot; rather it was drawn after five days before the learned SDM and the charge-sheet was filed for FSL report.

6. On behalf of the State, learned APP has reiterated that the petitioner is a foreign national who had entered India through a fake passport and has been staying here since 2018. He had given a false identity to the police and in case he is released on bail, he is a flight risk and moreover as and when he is released on bail he is to be deported to his home country, which will hamper the progress of the trial.

7. After hearing both the sides, I am of the view that as far as the allegations of the petitioner that there was violation of Section 50 of the NDPS Act is concerned, here the recovery was made from the room which was under lock and key of the present petitioner and not from the person of the accused. As far as the compliance of Section 100 of Cr.P.C. is concerned, where the persons of the neighbourhood did not join the search



operations, they cannot be forced to do so. Only genuine attempt should be made. It has been mentioned in the charge-sheet that IO had explained the circumstances to 2-3 passerby and asked them to join the police proceedings but when they heard about the drugs, no one agreed.

8. It has been mentioned that search warrant of the house could not be obtained as there was every chance that the drug might be removed from the room of the petitioner due to presence of large number of Nigerian origin persons in the area. As far as the search of the person of the petitioner is concerned, notice under Section 50 of the NDPS Act was given but he refused to get himself searched in the presence of any Gazetted Officer or a Magistrate, so his search was conducted in the presence of ACP but no drug was found and a nil recovery memo was prepared.

9. Although no person can be denied bail only on the ground that he is a foreign national but in the present case the petitioner had entered country on a fake passport and also after grant of bail he cannot stay back in the country. The matter is at the evidence stage and important witnesses are yet to be examined.

10. The substance recovered at the instance of the petitioner was sent to FSL and a positive report in this regard has been received. The petitioner is entitled to take all the technical objections during trial.

11. Keeping in view the recovery of about 100 grams of *Heroin* at the instance of petitioner, the trial being at the initial stage of recording of evidence, the fact that the petitioner had entered India on the basis of a fake passport and the fact that the accused had attempted to hide his true identity from the prosecution and the possibility of the accused fleeing from the country or him being deported to his native country cannot be ruled out,



hence he is not entitled to bail at this stage.

12. In view of the above, the bail application is dismissed.

TALWANT SINGH, J

JULY 19, 2022/mr

