



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

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Reserved on : 23.02.2022

Pronounced on : 19.04.2022

+ **BAIL APPLN. 3289/2020**

EMEKA CHARLES OMUKA

..... Petitioner

Through: Mr. Varun Mishra, Advocate.

Versus

NARCOTIC CONTROL BUREAU

..... Respondent

Through: Mr. Subhash Bansal, Sr. Standing
Counsel for NCB.

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 Crime No. VIII/50/DZU/2019 registered under Section 8 (C), 21 (C) of the NDPS Act., pending before the Court of Ld. Special Judge, NDPS, Patiala House Courts, New Delhi.



2. Briefly stated, the facts of the present case are that on the basis of a secret information received on 26.12.2019, a raid was conducted on 27.12.2019 in the presence of independent witnesses at House No. A-25, First Floor, Gali No 7, Vipin Garden, Uttam Nagar, New Delhi where petitioner Emeka Charles Omuka was living. Upon search of the said house, 270 grams of Heroin was recovered from the inner-side of window AC fixed above the main door.

3. I have heard the Ld. counsel for the petitioner, Ld. Sr. Standing 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 contraband recovered is marginally above the commercial quantity which indicates that the same is intentionally exaggerated to put embargo of Section 37 NDPS Act. He further submitted that in the case of marginally above commercial quantity bails have been granted by various High Courts in India and he relied upon :

- (a) CRM-M-37253 of 2016 (Fetstus Ugochukwu Vs. State of Punjab) decided on 07.12.2016.
- (b) CRM-M-40876-2017 (Vishal Shah Vs. State of Punjab) decided on 04.04.2018



- (c) CRM-M-44873-2019 decided on 24.01.2020 in case titled as Kala Vs. State of Punjab and CRM-M 17459-2018 decided on 13.09.2018 in case titled as Harjeet Singh alias Jajj Vs. State of Punjab.
- (d) CRM-M-53641-2019 decided on 13.08.2020 in case titled as Nirmal Singh @ Bittu Vs. State of Punjab.

5. It is further submitted by the Ld. counsel for the petitioner that the petitioner has already retracted his statement forcibly got recorded from him under Section 67 of the NDPS Act, therefore, the credibility of the same is doubtful. He further submitted that the petitioner is in J.C. since 27.12.2019 and there is no chance of absconding away if he is released on bail. He further submitted that the petitioner had no concern or connection with the alleged recovery of contraband material as the same was admittedly not recovered from the petitioner/accused. He further submitted that there is no apprehension of petitioner being tempering any evidence of threatening any witnesses.

6. On the other hand, it is submitted by the Ld. Sr. Standing counsel for the respondent (NCB) that the contraband recovered from the house of petitioner i.e. 270 gm. of heroin which is a commercial quantity, therefore embargo of Section 37 of the NDPS Act applies in the case of present petitioner. He further submitted that the petitioner is



a foreign national and there is every possibility of his evading the trial, in case he is released on bail. He further submitted that the charge is yet to be framed against the petitioner and the public witnesses are yet to be examined. He prays for the dismissal of the bail application.

7. In the instant case, the total recovered Heroin is 270 gm. which is a commercial quantity so rigors of Section 37 of NDPS Act definitely applies in this case.

8. Under Section 37(1)(b)(ii), the limitations on the grant of bail for offences punishable under Sections 19, 24 or 27A and also for offences involving a commercial quantity are :

(i) The Prosecutor must be given an opportunity to oppose the application for bail; and

(ii) There must exist 'reasonable grounds to believe' that (a) the person is not guilty of such an offence; and (b) he is not likely to commit any offence while on bail.

9. The standard prescribed for the grant of bail is 'reasonable ground to believe' that the person is not guilty of the offence. Interpreting the standard of 'reasonable grounds to believe', a two-judge Bench of **Supreme Court** in ***Union of India Vs. Shiv Shanker Kesari (2007) 7 SCC 798*** held that:



“7. The expression used in Section 37(1)(b)(ii) is “reasonable grounds”. The expression means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence charged and this reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify recording of satisfaction that the accused is not guilty of the offence charged.

8. The word “reasonable” has in law the prima facie meaning of reasonable in regard to those circumstances of which the actor, called on to act reasonably, knows or ought to know. It is difficult to give an exact definition of the word “reasonable”.

“7. ... In Stroud's Judicial Dictionary, 4th Edn., p. 2258 states that it would be unreasonable to expect an exact definition of the word ‘reasonable’. Reason varies in its conclusions according to the idiosyncrasy of the individual, and the times and circumstances in which he thinks. The reasoning which built up the old scholastic logic sounds now like the jingling of a child's toy.”

(See Municipal Corpn. of Delhi v. Jagan Nath Ashok Kumar [(1987) 4 SCC 497] (SCC p. 504, para 7) and Gujarat Water Supply and Sewerage Board v. Unique Erectors (Gujarat) (P) Ltd. [(1989) 1 SCC 532]

[...]

10. The word “reasonable” signifies “in accordance with reason”. In the ultimate analysis it is a question of fact, whether a particular act is reasonable or not depends on the circumstances in a given situation. (See Municipal Corpn. of Greater Mumbai v. Kamla Mills Ltd. [(2003) 6 SCC 315]

11. The court while considering the application for bail with reference to Section 37 of the Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty.”

(emphasis supplied)



10. Based on the above, the test which is required to be applied while granting bail is whether there are reasonable grounds to believe that the accused has not committed an offence and whether he is likely to commit an offence while on bail. Looking into the seriousness of the offence punishable under the NDPS Act and in order to curb the menace of drug-trafficking in the country, stringent parameters for the grant of bail under the NDPS Act have been prescribed.

11. In the present case, as per the Status Report, the charges are yet to be framed against the petitioner and trial is yet to commence. The recovery of 270 gm. of Heroin which is a commercial quantity was effected from the house of the petitioner in the presence of independent witnesses who are yet to be examined. As far as the contention of the Ld. counsel for the petitioner that the contraband recovered is marginally above the commercial quantity which indicates that the same is intentionally exaggerated to put embargo of Section 37 NDPS Act is concerned, the same is a matter of trial and cannot be looked into at this stage of bail and no opinion or finding can be given in this regard. The quantity of contraband recovered is a commercial quantity, therefore, bar of Section 37 of NDPS Act is applicable. In these circumstances, no ground for bail is made out. The bail application is, therefore, dismissed. All pending applications, if any, are also disposed of accordingly.



12. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of this case.

RAJNISH BHATNAGAR, J

APRIL 19, 2022

Sumant

