



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

Judgment reserved on: 24.11.2021

Date of decision: 21.03.2022

+ **BAIL APPLN. 3542/2021**

MARTIN CHIKAMMA NWOKORIE

..... Petitioner

Through: **Mr. Vikas Gautam, Advocate.**

Versus

NARCOTIC CONTROL BUREAU

..... Respondent

Through: **Mr. Subhash Bansal, Sr.
Standing Counsel for NCB with
Mr. Shashwat Bansal, Advocate.**

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J

1. The applicant, Martin Chikamma Nwokorie vide the present application seeks the grant of regular bail in terms of Section 439 of the Cr.P.C. in relation to Sessions Case No.9/2021 in relation to complaint case No.VIII/33/DZU/2020 filed by the Narcotics Control Bureau under Sections 8(c), 21(c), 23(c) and 29 of the NDPS Act, 1985.

2. The applicant in the instant case is indicated to have been arrested on 14.07.2020 at about 2200 hours. The prosecution version



put forth through the complaint of the Narcotics Control Bureau, Delhi Zonal Unit indicates to the effect that on 10.07.2020, the Director General of the Narcotics Control Bureau had authorized Sh.Rampal, Intelligence Officer/DZU to undertake the control delivery of parcel Airway Bill No.3449436874 and Airway Bill No.3449436922 which was believed to contain Narcotic Drugs vide order No. XVIII/03/2020/Int dated 10.07.2020 after requisite formalities by making entries in the movement register in collecting various items required for seizure, Sh.Rampal, Intelligence Officer along with his team left the Delhi Zonal Office at about 10.20 hours on 11.07.2020 and reached the destination at Aramex India Pvt. Ltd, Plot No.211, Bamnoli Village, New Delhi-77 at 11.15 hours on 11.07.2020, whereafter, Sh.Rampal, Intelligence Officer shared the information about controlled delivery of Airway Bill No.3449436874 & Airway Bill No.3449436922 with the Manager Security, Aramex India Pvt. Ltd. on which the system was checked by Mr.Sandeep Saroha who informed Sh. Rampal Intelligence Officer that AWB-3449436922 had reached and the second parcel bearing AWB-3449436874 was on the way and that the AWB No.3449436922 was brought before the team



of the NCB by Mr.Sandeep Saroha and on checking the same in the presence of independent witnesses, it was found to contain six smaller sized cardboard boxes which were further found to contained LED lights and on checking of LED lights one packet of an off white substance was found in each light concealed beneath the panel of the lights and the suspected substance was removed from all the six LED lights and examined and a small amount of substance was taken one by one from all the six packets and tested with the field testing kit and all the tests gave positive result for the presence of heroin, and as the substance in all the six packets was similar in colour and texture, a homogenous lot was made and weighed which was found to weigh 500 gms and two samples of 05 grams each were taken and put in two plastic zip lock pouches and then put in white colour paper envelops.

3. As per the complaint, on 14.07.2020, Sh. Rampal, the Intelligence Officer received information from Sh.Sandeep Saroha of Aramex Courier that the receiver of the parcel was coming to Aramex to collect the parcel Air Way Bill Number 3449436922, in as much as, there were directions to the Intelligence Officer for conducting control delivery vide letter No. XVIII/03/2020/INT, the manager security



Aramex was informed that the consignment be not returned nor sent and a dummy consignment for Air Way Bill Number 3449436922 was prepared on 11.07.2020 from the unit Malkhana in-charge Sh. Amit Kumar Tiwary, Superintendent, NCB/DZU and Sh.Rampal, the Intelligence Officer gave the dummy consignment to Sh. Sandeep Saroha on 14.07.2020 and also requested him to provide two independent witnesses for witnessing the seizure proceedings and two staff personnel of Aramex agreed to join the team and the consignment was handed over to the intended consignee i.e. Lhingneihat Lhouvum on her showing proof of identity by showing her electro/ID card bearing ID .No. HYG0049353 and after the parcel was handed over to her against receipt, she was informed by Sh.Rampal, the Intelligence Officer about the information and of the previously intercepted and seized parcel and the preparation of the dummy consignment and of the recovery of 500 gms of heroin from Air Way Bill Number 3449436922 when Lhingneihat Lhouvum admitted that she was a part in the booking and receiving of the same consignment and also for consignment AWB No. 3449436874 and she also disclosed that her partner namely Nwokorie Martin Chikamma



i.e. the applicant herein was the real consignee. As per the prosecution, the dummy carton box was shown to Lhingneihat Lhouvum and Martin Chikamma Nwokorie and to the independent witnesses.

4. A notice under Section 67 of the NDPS Act, 1985 was also issued to Martin Chikamma Nwokorie and so was a notice issued to Lhingneihat Lhouvum under Section 67 of the NDPS Act, 1985 apart from issuance of the said notices to independent witnesses.

5. As per averments in the complaint of the NCB, on 14.07.2020 both Martin Chikamma Nwokorie i.e. the applicant herein and Lhingneihat Lhouvum who were issued notices under Section 67 of the NDPS Act, 1985 had voluntarily accompanied the NCB officials from Aramex Courier to the office of the Narcotics Control Bureau, Delhi Zonal Unit, R. K. Puram, New Delhi to tender their voluntary statement and the applicant herein after having been apprised that his statement could be used against him or against any other person in the Court of law and that he had a right to remain silent gave his statement without any fear, inducement and pressure and informed that he was living with his *wife* Lhingneihat Lhouvum at F-1/22, Third Floor,



Mohan Garden, Uttam Nagar, New Delhi on rent and stated that on 14.07.2020, he had booked an Uber taxi from Mohan Garden, Uttam Nagar and had gone to Mahipalpur, New Delhi with his wife Lhingneihat Lhouvum and thereafter they picked an auto from Mahipalpur and went to Aramex Courier Company, Bamnoli village New Delhi to collect his parcel Airway Bill No.3449436874 and AWB-3449436922 and reached at Aramex at about 13:00 hrs and further disclosed that these parcels were booked by his country brother Ucche @ Alex Mwebaze from Kampala, Uganda and also provided his mobile number 256772502504 on the address of his wife Lhingneihat Lhouvum and he further informed that he used the ID of his wife as she is an Indian and he had no other Indian ID to book the parcels and he had further stated in his statement that he asked about the parcel AWB-3449436874 and AWB-3449436922 from Aramex officials and on his query, the Aramex staff stated that only one parcel AWB-3449436922 had been received and that the other parcel had not been received by them till that time and he further stated that on demand Lhingneihat Lhouvum showed her original ID to the Aramex Staff and collected the parcel from the Aramex Staff and that when



they were to go out from the Courier Company office, some person came there and one of them disclosed their identity as being the staff of NCB and he also showed his ID Card and he further stated that the NCB officer asked his wife about her name and on that she disclosed her name as Lhingneihat Lhouvum and also showed her election voter ID Card and on asking, the applicant herein told his name as Martin Chikamma Nwokorie and the NCB officer informed them of the information and also informed that the parcel received by them was the dummy parcel of Air Way Bill No. 3449436922 and that they had seized 500 grams heroin from the original parcel AWB-3449436922 on 11.07.2020 at Aramex India Pvt. Ltd. Plot No.211, Bamnoli Village, New Delhi-77 in presence of independent witnesses and that Martin Chikamma Nwokorie in his statement also disclosed that Lhingneihat Lhouvum had told the NCB officer that he i.e. the applicant herein was the real consignee of the parcel AWB-3449436922 and that thereafter, the NCB officer had opened the dummy parcel in their presence and found that it contained LED Lights and that the dummy parcel was sealed by the NCB team with their seal in his presence and the NCB officer gave a notice u/s 67 of



the NDPS Act, 1985 to him and to Lhingneihat Lhouvum and the applicant in his statement admitted that Lhingneihat Lhouvum knew that the parcel contained heroin and further informed that his brother Uchhe had sent two parcels containing heroin to him and that he had purchased heroin from his brother @ 8500 USD per Kg and was to sell it @ 11500 USD per Kg and further disclosed his mobile numbers as being 917428730775, 918788464877, 919311523924, 9643475085, 9560761436 and of Lhingneihat Lhouvum as being 9311541521 & 7303639629. He further informed that all these numbers were taken by him on another person's ID without their knowledge from one African named Frank @ Rs. 1500/- per sim card and the applicant also admitted about his involvement in the trafficking of heroin.

6. As per the complaint of the NCB on record, Lhingneihat Lhouvum in her statement under Section 67 of the NDPS Act, 1985 on 14.07.2020 after she had been apprised by the Intelligence Officer of the NCB that her statement could be used against her or any other person in the Court of law and that she had a right to remain silent, but she gave her statement without any fear, inducement and pressure before Sh. Anand Kumar, IO in presence of Lady Sepoy Kiran Devi



and she disclosed that she is a permanent resident of village Karbi Anglong Assam and was residing at F-1/22, third floor, Mohan Garden, Uttam Nagar, New Delhi for the last five months and before that she had been residing at Mahavir Enclave, New Delhi and further stated that Martin i.e. the applicant herein became her friend on face book and then they had got married and she also stated that some days back Martin i.e. the applicant herein had told her that he required a photocopy of her ID for booking the parcel from Uganda by his brother and in her statement, she further stated that Martin had told her that his brother booked two parcels on her ID vide Air Way Bill No. 3449436922 and AWB-3449436874 and she further stated that she contacted Aramex as directed by Martin Chikamma Nwokorie i.e. the applicant herein to collect the parcel with the original ID and stated that she had sent a mail to Aramex and had also sent the electrical bill on the mail for delivery of the parcel but Aramex had refused to give the parcel on the address as the address on the ID was different. She has further stated in her statement that on 14.07.2020 they had booked a taxi and gone to Mahipalpur and then Martin i.e. the applicant herein had booked an auto at Mahipalpur and they



reached at Aramex where the Aramex staff on queries told her that only parcel bearing No. 34494336922 has arrived there, whereafter, she had collected the parcel on showing her original ID, whereafter whilst they were coming out, she was informed by the NCB team of the parcel handed over to her being a dummy parcel and the original thereof having been checked and found to contain 500 gms of heroin and of it being seized.

7. *Inter alia*, Lhingneihat Lhouvum is stated as per the complaint to have stated that one of the friends of the applicant herein is involved in this business but she did not know about his name and address or mobile number and she disclosed the mobile number of the applicant as being 7428730775, 8788464877, 9311523924, 9643475085, 9560761436 and her mobile numbers to be 9311541521 and 7303639629 and she admitted her guilt and admitted her involvement in the commission of the offence.

8. As per the complaint of the NCB, the applicant herein and Lhingneihat Lhouvum were arrested on 14.07.2020 after being apprised of the grounds of arrest.



9. As per the complaint, on 15.07.2020, Sh. Rampal, Intelligence Officer received information that the parcel Airway Bill Number 3449426874 had been detained and kept on hold by the Custom Authorities at the IGI, Airport Cargo Complex, which parcel was the part of control delivery and on 15.07.2020, in continuation of the order No. XVIII/03/2020/INT dated 10.07.2020 for controlled delivery of the parcel Airway Bill Number 3449136874 and Air Way Bill Number 3449436922 and subsequent orders information was received by Sh.Rampal IO that the consignment AWB No.3449436874 had been detained and put on hold by the Custom Authorities, i.e. IGI Airport Cargo Complex, New Delhi for duty clearance and thus, Sh. Ram Pal, Intelligence Officer with his team on collection of the seal of NARCOTICS CONTROL BUREAU, DZU-5 and collection of various equipment and documents including field testing kit necessary for conducting of the seizure proceedings went to the cargo area of the IGI Airport, New Delhi and reached there at about 1400 hrs on 15.07.2020 and introduced himself and his team to the Deputy Commissioner, Indian Customs and had informed the Deputy Commissioner about the information he had received regarding the



holding and detainment of the consignment AWB No.3449436874 and also informed of the arrest of the intended consignee in relation to AWB No. 3449436922 and the Intelligence Officer thus requested the release of the second consignment AWB No.3449436874 to him and to allow him to take hold and detained the same to complete the controlled delivery for the same as per order received which was allowed by the Deputy Commissioner, Indian Customs, whereafter, the Intelligence Officer, Sh.Rampal joined the independent witnesses for the search and seizure formalities and the consignment parcel Airway Bill No.3449436874 sealed with the Aramex tape and that he removed the consignment papers i.e. four pages with the name of shipper being Phiona Birungi, Address Nazz Najjanankumbi, City Kampala, Phone No.256704246222 and the name of the consignee being Lhingneihat Lhouvum, Address being Ghoijang Gaon PS Manjha Diphu, Karbinlong, Assam 782461, Phone +917303639629 from the parcel packet and took it in possession and then opened the parcel, which was found to contain four cardboard carton boxes and on opening each box, it was seen that there were 12 (Twelve) sleek make up compact plus foundation boxes in each of the four boxes and



on opening the sleek make up boxes, there was one sleek make up compact plus. foundation set in each box and on opening the set, on the lower side of the pack, on opening the layer that held the cotton pad and a layer of the so called compact plus foundation, it was found to contain a plastic packet containing an off white powdery substance concealed within the cavity of each pack and the powdery substance was taken out of each pack and there were 48 (Forty eight) such packets and that a small amount of the substance was taken from each packet and tested using the field testing kit and all gave positive results for the presence of heroin, a narcotic drug and as the substance in all the packets was similar in colour and texture, they were all opened and poured into one transparent polythene packet and weighed and the weight of suspected heroin came to be 470 Grams. The mixture was mixed homogeneously and two samples weighing 05 grams were put in two zip lock pouches and the same were put into envelopes (white paper) and the heroin recovered and all the articles were seized.

10. The Intelligence Officer is thereafter indicated to have issued a notice under Section 67 of the NDPS Act, 1985 to Arjun Chand S/o



Sh.Girish Chand, r/o B-327 ,FF Green Field Colony, NIT, Faridabad, Haryana, the independent witness and asked him to tender his voluntary statement on 22.09.2020.

11. On 15.07.2020, the Superintendent, NCB sent a letter to the Ministry of External Affairs, Consular Division, Patiala House, New Delhi giving information about the arrest/prosecution of foreigners and their medical examination was also conducted at the Safdarjung Hospital, New Delhi on 15.07.2020 before they were produced before the Court.

12. *Inter alia* during the questioning of the applicant by Sh.Anand Kumar, Intelligence Officer on 15.07.2020, the applicant is stated to have answered that since the year 2017 he is residing at the Mohan Garden, Uttam Nagar, New Delhi and is presently residing at F-1/22, third floor, Mohan Garden, Uttam Nagar, New Delhi and since the last 03 months his wife Lhingneihat Lhouvum was residing with him and he further stated that he had sent the mail to Aramex from his mail address martin.fransis@gmail.com and he also confirmed that parcel AWB No.3449436874 was sent to him by his brother Uchhe from Uganda.



13. The investigation was also conducted by the NCB on 16.07.2020 when the applicant herein Martin Chikamma Nwokorie and independent witnesses went to Flat no. F-22, Mohan Garden Uttam Nagar New Delhi where the iron grill gate was found locked and the applicant Martin Chikamma Nwokorie had taken out the key and concealed /kept under the foot mat lying in front of the gate and had opened the lock and on the search having been conducted at that house, it was found that it was a two room set with drawing room, kitchen toilet and bathroom and in the kitchen in the lower drawer of the kitchen, one big polythene was found and a small pinch of substance was taken out from that substance and checked with the help of field testing kit and it gave positive result for heroin and it weighed 360 gms, out of which two samples of 05-05 grams were taken out from that substance and were put in separate zip lock pouches and again put in two separate white colour paper envelopes and the mouth of the polythene containing remaining substance was tied with a plastic sutli and a pullanda was made with markin cloth and was marked as "A" and the remaining white polythene, weighing machine, khaki tape and black tape were put in a markin cloth and a



pullanda was made and was given mark- 'B', and after that the front room was searched in that room, and one rack and one trolley bag were there, and when the trolley bag was searched five bundles of 500 Indian currency notes were found and in the presence of Martin Chikamma Nwokorie i.e. the applicant herein and independent witnesses all the bundles were counted and found to be 500 x500 i.e. Rs.2,50,000/-(Two lakh fifty thousand only) which were also seized and sealed, some documents i.e. one ATM and one key of Scooty were also found and the applicant confirmed that it was his scooty which was parked in the parking of the house and he purchased this Scooty from his money earned from the drug trafficking in the name of Anju Bhalla for his own and disclosed the number of the scooty bearing Regn. No. DL 9SBX 8761.

14. The applicant, in replies to the NCB questions had disclosed that the drug recovered from his house was sent by his brother and the money was earned from selling the drug which he purchased @ 8500 USD and was selling @ 11500 USD per kg.

15. As per the complaint, the applicant had arrived at Mumbai Airport by ET-610 on 31.03.2011 and gave his address F-1/22, Third



floor, Mohan Garden, Uttam Nagar, New Delhi and during investigation on 12.08.2020 with inquiries conducted from the Nodal Officer Bharti Airtel Ltd.,224, Okhla Industrial Estate Area ,Ph-III, New Delhi, it was ascertained that the customer application form qua mobile number 7303639629 was registered in the name of Salman Khan S/o Jakir Hussain r/o RZF-1/12A, Gali No.-1, Mahavir Enclave, Palam Village Delhi which address was found to be correct and the mobile number was being used by Lhingneihat Lhouvum and in the CDR of this number there were calls made to mobile number 8788464877 to Martin Chikamma Nwokorie i.e. the petitioner herein and on Aramex Customer Care 02239419900 with the CAF/CDR along with certificate under Section 65B of the Indian Evidence Act, 1872 having been submitted along with the complaint by the NCB.

16. As per the investigation conducted, the mobile number 9311541521 was found registered in the name of Suraj Bahadur S/o Kharak Bahadur, R/o House No.1287, Gali No.16, Block-H, Sangam Vihar, Puspha Bhawan SO, Delhi which number was however being used by Lhingneihat Lhouvum but that the physical verification of the address could not be done due to an incomplete address but in the



CDR of this number, huge calls were made to Martin Chikamma Nwokorie on his mobile number 8788464877 and the CAF/CDR along with the certificate under Section 65B of the Indian Evidence Act, 1872 was submitted along with the complaint by the NCB. The mobile number 9311523924 was registered in the name of Ms.Lalita D/o Late Shiv Ratan Singh r/o House No.538, Om Nagar, Khandsa Road, Gurugram Haryana was also found being used by Martin Chikamma Nwokorie i.e. the applicant herein and the certificate under Section 65B of the Indian Evidence Act, 1872 was submitted along with the complaint by the NCB. The mobile number 9643475085 was registered in the name of Vipin Kumar S/o Sh. Shyam Kishor Prasad, house No.156, Sunni Wali Masjid Gali, Fatehpur Beri, Delhi qua which it was also revealed during the investigation that it was being used by Martin Chikamma Nwokorie and had been taken from one Nigerian and the CAF/CDR along with the certificate under Section 65B of the Indian Evidence Act, 1872 having been submitted along with the complaint by the NCB. It is indicated as per record that the physical verification in relation to mobile number 7669055432 was registered in the name of Abhisek Singh S/o Surindra Singh R/o Hari



Nagar, Anaj Mandi, Gurgaon, being used by Nicholos could not however been found out due to an incomplete address.

17. As per the complaint, Shri Amit Kumar Tiwary, Superintendent on 26.08.2020 had received the report dated 23.07.2020 from the CRCL, Pusa Road, New Delhi of sample mark A-1, seized from the parcel at the Aramex India Pvt. Ltd., Bamnoli Village, New Delhi from CRCL, Pusa Road, New Delhi, in a sealed envelope and had also received the remnant sample in separate sealed envelope and on opening the report, it was noticed that the sample A-1 gave positive test for Diacetylmorphine (Heroin), 6-Monoacetylmorphine, Acetyl Codeine along with caffeine and the said report and sealed remnant sealed envelope and the said envelopes were marked to the respective IO and on 28.08.2020, Shri Amit Kumar Tiwary, Superintendent received the test report dated 30.07.2020 of sample mark B-1, seized from the Parcel at the Import Custom Examination Area, New Courier Terminal, IGI, Airport New Delhi in a sealed envelope and also received the remnant sample in a separate sealed envelope and on opening the report, it was found that the samples B-1 gave positive test for Diacetylmorphine (Heroin), 6-Monoacetylmorphine, Acetyl



Codeine along with caffeine and the said report and the sealed remnant sealed envelope and the said envelopes were marked to the respective I.O. and another witness namely Ghanshyam was also examined by the NCB. On 10.09.2020, Shri Vikram Singh S/o Sh. Lalta Prasad r/o Flat No.166, Plot No.10, Pocket No .6, Capital Apartment, Naseerpur, Dwarka Sector-1A, New Delhi is also indicated to have made a statement under Section 67 of the NDPS Act, 1985.

18. It is stated through the complaint that on 16.09.2020, in response to a letter dated 11.09.2020, the mirror image of the mobile set of accused Lhingneihat Lhouvum VIVO 1718 was received from Admin Manager Thomas T.O. vide Mobile data Extraction report Ref. No. SIFS/CYB/2020/167 and in the mirror image of mobile invoice and Express Cargo Clearance system Airway Bill No. 3449436922 Flight ticket, AWB No.3449436874, correspondence with Aramex Courier, Election voter ID of Lhingneihat Lhouvum, messages and other incriminating documents were found and that on 16.09.2020, in response to a letter dated 11.09.2020, the mirror image of the mobile set Samsung Galaxy A-7 of accused Martin Chikamma Nwokorie (the



applicant herein) was received from Admin Manager Thomas T.O. vide Mobile data Extraction report Ref. No. SIFS/CYB/2020/168 and in the mirror image in the contact list, the mobile number of Lhingneihat Lhouvum, and photographs of Lhingneihat Lhouvum were found and the certificate under Section 65 B of the Indian Evidence Act, 1872 was also placed on record by the complainant.

19. The NCB is also indicated as per the complaint to have sent a letter to the Director SIFS, Mahendru Enclave with a request to extract the mirror image of the Mobile phone I-phone X of Lhingneihat Lhouvum seized in the matter and on 18.12.2020 the NCB had received mirror images and extract of mobile data of I-Phone X of accused persons namely Lhingneihat Lhouvum and certificate under section 65B of the Indian Evidence Act from SIFS and in the mirror image, the photograph of the parcel under question was found and correspondence with Aramex in regard to the parcel was found and in the mirror image the photograph of Lhingneihat Lhouvum and Martin Chikamma Nwokorie was also found.

20. As regards the mobile number 8788464877, it was found registered in the name of Tej Bobi Dholi S/o Debi Birdev Mandir



Javal Dhangar, Gali Hatkanan gali Kolhaapur, Maharashtra and the siad number was being used by Martin Chikamma Nwokorie i.e. the applicant herein as disclosed by him in his statement with the CAF/CDR along with the certificate u/s 65B of the Indian Evidence Act, 1872 having been submitted by the NCB.

21. Further investigation had also been conducted as per the complaint in relation to the scooty recovered from the applicant with the queries having been put to Anju Bhalla in relation to the same.

22. It has been submitted in the complaint that the inquiry, investigation and documents made it clear that the accused persons had hatched the criminal conspiracy and abetted amongst themselves to commit the offence of the case with their common intention by illegally trafficking the narcotic drugs and by illegally possessing, transporting and selling the same intentionally with knowledge to earn illegal amount from the sale proceeds of illicit trafficking of drugs or violation of the provisions of Sections 8(c), 21, 23 & 29 of the NDPS Act, 1985.

23. The NCB also pursuant to order dated 24.11.2021 placed on record the copy of the mail that had been sent by the applicant to Atul



Sarode Aramex dated 10.07.2020 at 11.34 vide which mail the Aramex India Pvt. Ltd and its group companies, agents were authorized to act as their agent to custom clear their shipments imported through Aramex India Pvt. Ltd. The mail sent by Lhingneihat Lhouvum to Aramex India Pvt. Ltd dated 10.07.2020 was to similar effect and it is indicated that in relation to this mail, it was informed by Atul Sarode of Aramex India Pvt. Ltd that as per their authorization, KYC documents were uploaded and verified qua Airway Bill No.3449436874.

24. Reliance was placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in "*Arup Bhuyan Vs. State of Assam*" in *Crl. Appeal No.889/2007 dated 03.02.2011* to contend to the effect that it was contended on behalf of the applicant that the prosecution case mainly relied on their alleged confessional statement made by the applicant made before the Superintendent of Police qua which there was no corroborative material and thus, it would be unsafe to convict the appellant in that case on the basis of this confessional statement.

25. Reliance is also placed on behalf of the applicant on the verdict of this Court in "*Amani Fidel Chris Vs. Narcotics Control Bureau*"



in CrI. Appeal no.1027/2015, a verdict dated 13.03.2020 to contend to the effect that the samples drawn in the instant case were not in consonance with the standing order 1/88 dated 15.03.1988 issued by the Narcotics Control Bureau itself, which reads to the effect:-

“

....

1.7 Number of samples to be drawn in each seizure case-

(a) In the case of seizure of single package/container one sample in duplicate is to be drawn. Normally it is advisable to draw one sample in duplicate from each package/container in case of seizure of more than one package/container.

(b) However, when the package/container seized together are of identical size and weight, bearing identical markings and the contents of each package give identical results on colour test by U.N. kit, conclusively indicating that the packages are identical in all respect/ the packages/ container may be carefully bunched in lots of 10 packages/containers may be bunched in lots of 40 such packages such packages/containers. For each such lot of packages/containers, one sample in duplicate may be drawn.

(c) Where after making such lots, in the case of Hashish and Ganja, less than 20 packages/containers remains, and in case of other drugs less than 5 packages/containers remain, no bunching would be necessary and no samples need be drawn.

(d) If it is 5 or more in case of other drugs and substances and 20 or more in case of Ganja nad Hashsih, one more sample in duplicate may be drawn for such remainder package/containers.



(e) While drawing one sample in duplicate from a particular lot, it must be ensured that representation drug in equal quantity is taken from each package/container of that lot and mixed together to make a composite whole from which the samples are drawn for that lot.

..... ”,

with it having been submitted that even a similar order was issued in relation to sub Section (1) of Section 52A of the NDPS Act, 1985 by the Department of Revenue, Ministry of Finance, Government of India.

26. Reliance is also placed on behalf of the applicant on the following verdicts:-

“(I). Noor Aga Vs State of Punjab, 2008 (9) SCALE 681,

(II) Harpreet Singh Bahad Vs DRI, B.A No 2211/2008 dated 23.09.2009, Hon'ble High Court of Delhi granted bail to the accused after considering the fact that the accused had retracted his statement and no conviction can be founded on the basis of retracted statement of the accused. A copy of order is enclosed herewith.

(IV) Tofan Singh Vs State of Tamil Nadu, Crl Appeal no.152/2013 dated 29.10.2020 of the Hon'ble Supreme Court.

(V) Javid Siddiqui Vs State, B.A No 2397/2020 vide orders dated 24.11.2020 of the Hon'ble High Court of Delhi.



***(VI) Shyam Babu Saxena Vs State, B.A. No 3452/2020
vide order dated 29.01.2021.”***

27. Reliance on the other hand is placed on behalf of the NCB on the following verdicts:-

- (i) State of Kerala Vs. Rajesh Etc.” Supreme Court Judgment dated 24.01.2020 in Criminal Appeal nos.154-157 of 2020.***
- (ii) Bobby Collin Vs. Narcotic Control Bureau, Delhi High Court Judgment dated 19.04.2021 in Bail Appl. No.812 of 2021.***
- (iii) Naveed Ummer Sheikh Vs. Narcotic Control Bureau (Delhi High Court Order dated 23.11.2021 in Bail Appl. No.3248/2021.***
- (iv) Edwin Emeka Igbokwe Vs. Narcotics Control Bureau (Delhi High Court Judgment dated 15.03.2021 in Bail Appl.85/2021.”,***

to contend to the effect that in the instant case, a commercial quantity of heroin had been recovered from the two parcels i.e. Airway Bill No.3449436922 and Airway Bill No.3449436874 as well as from the house of the applicant and thus, the embargo under Section 37 of the NDPS Act, 1985 is wholly applicable against the grant of bail to the applicant in the instant case, in as much as, there is nothing to indicate that there are reasonable grounds for this Court for believing that the applicant is not guilty of any offence and not likely to commit the offence subsequently, when on bail.



ANALYSIS

28. On a consideration of the rival submissions made on behalf of either side, it is indicated that 360 gms of heroin which amounts to a commercial quantity was allegedly recovered from the house of the applicant at F-1/22, Third Floor, Mohan Garden, Uttam Nagar, New Delhi on 16.07.2020 and furthermore, one parcel Airway Bill No.3449436922 was seized on 11.07.2020 was found to contain **500 gms** of heroin and the applicant and Lhingneihat Lhouvum with whom the applicant denies any relationship who he has disclosed to be his wife and qua whom there is as per the complaint filed by the NCB, mirror images in the contact list of Lhingneihat Lhouvum of the mobile set Samsung Galaxy A-7 of the applicant, coupled with the factum that the applicant had sent a mail to Aramex India Pvt. Ltd from his mail address martin.fransis@gmail.com dated 10.07.2020, print out of which mail also shows the name of Lhingneihat Lhouvum with coated text hidden and coupled with the factum that the said mail also mentions the Airway Bill No.3449436874 on the same as mentioned by ATUL@Aramex.com to martin.francis123@gmail.com



with the authorization letter being sent by Lhingneihat Lhouvum, are aspects which cannot be overlooked at this stage.

29. Furthermore, the mobile number 7303639629 registered in the name of Salman Khan was found by the Investigating Agency to be used by Lhingneihat Lhouvum and in the CDR of this mobile number, calls were made to mobile number 8788464877 to the applicant as well as on the Aramex Customer Care 02239419900. The mobile number 9311541521 registered in the name of Suraj Bahadur was found being used by Lhingneihat Lhouvum and in the CDR of this number there were huge calls were made to Martin Chikamma Nwokorie i.e. the applicant herein to his mobile number 8788464877; the mobile number 9311523924 was found registered in the name of one Lalita D/o late Sh. Shiv Ratan Singh and it was being used by the applicant.

30. Thus, in the above circumstances that have been collected by the Investigating Agency at this stage even if the disclosure statements made by the applicant himself and that of Lhingneihat Lhouvum are not considered to be admissible in evidence in view of the verdict of the Hon'ble Supreme Court in "*Tofan Singh Vs. State of Tamil*



Nadu” (2021) 4 SCC 1 as followed in **“Sanjeev Chandra Agarwal & Anr. Vs. Union of India”** in Criminal Appeal No(s). 1273/2021, a verdict dated 25.10.2021 and the verdict of the Hon’ble Supreme Court in a Petition for Special Leave to Appeal (CRL.) No.242 of 2022 Arising out of Diary No.22702 of 2020 in case titled as **“STATE BY (NCB) BENGALURU VERSUS PALLULABID AHMAD ARIMUTTA & ANR.”** alongwith Petition for Special Leave to Appeal (CRL.) No.1569 of 2021 in case titled as **“UNION OF INDIA VERSUS MOHAMMED AFZAL”** with Petition for Special Leave to Appeal (CRL.) No.1454 of 2021 in case titled as **“UNION OF INDIA NARCOTICS CONTROL BUREAU, BENGALURU VERSUS MOHAMMED AFZAL”** with Petition for Special Leave to Appeal (CRL.) No.1465 of 2021 in case titled as **“STATE BY INTELLIGENCE OFFICER, NARCOTICS CONTROL BUREAU” VERSUS MUNEES KAVIL PARAMABATH @ MUNEES KP”** with Petition for Special Leave to Appeal (CRL.) No.2080 of 2021 in case titled as **“STATE OF KARNATAKA VERSUS MUNEES KAVIL PARAMABATH”** and Petition for Special Leave to Appeal (CRL.) No.1773-74 of 2021 in case titled as **“STATE BY INTELLIGENCE**



***OFFICER (NCB) BENGALURU ZONAL UNIT, BENGALURU
VERSUS ABU THAHIR @ ABDU & ETC.”*** dated 10.01.2022

making it apparent that confessional voluntary statements of the accused or co-accused cannot be considered as admissible evidence against the accused, *nevertheless*, the circumstances collected during investigation as aforementioned against the applicant, *prima facie*, do not indicate him to be not guilty of the commission of the offences punishable under Sections 8(c), 21(c), 23(c), 29 of the NDPS Act, 1985, especially as the alleged recovery of 360 gms of heroin from the residence of the applicant as well as the recovery of **470 gms** of heroin from the parcel Airway Bill No.3449436874 in relation to which there is a mail dated 10.07.2020 sent by the applicant to Aramex India Pvt. Ltd., though the consignee of this parcel was Lhingneihat Lhouvum, coupled with the factum that the mobile data of the applicant and Lhingneihat Lhouvum depict conversations between them and mirror images of mobile of the applicant and Lhingneihat Lhouvum also depict the existence of contacts between the applicant and Lhingneihat Lhouvum and thus, the existence of a conspiracy *inter alia* between the applicant and Lhingneihat Lhouvum, the consignee of Airway Bill



No.3449436922 & Airway Bill No.3449436874 cannot at this stage held to be inexistent.

CONCLUSION

31. The application is thus, rejected.
32. Nothing stated hereinabove shall however amount to any expression on the merits or demerits of the case.

ANU MALHOTRA, J.

MARCH 21, 2022

At



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