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

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*Reserved on: 31.10.2023**Pronounced on: 03.11.2023*+ **BAIL APPLN. 2699/2019**

STANLEY AZUKA EWUZIE

..... Petitioner

Through: Mr. Rohan Gupta and Mr.
Anoop Kr. Gupta, Advocates

versus

STATE

..... Respondent

Through: Mr. Manoj Pant, APP for the
State**CORAM:****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J.**

1. The instant application has been filed on behalf of applicant under Section 439 of the Code of Criminal Procedure, 1973 ('Cr.P.C.'), seeking grant of regular bail in case FIR bearing No. 233/2018 registered at Police Station Crime Branch, Delhi under Section 21 of Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act') and Section 14 of Foreigners Act, 1946.

2. Briefly stated, the facts of the case as per prosecution are that on 13.08.2018 at about 5:30 PM, Crime Branch, Delhi had received information that present accused/applicant, who is a Nigerian national was residing at Bengali Colony, Delhi, was engaged in trade/supply of heroin. Following the receipt of secret information, a



team was constituted and the applicant herein was apprehended. Upon conducting search of the applicant, a black-coloured polythene containing white powder was recovered and seized from right pocket of his pant. This white powder was tested using a field drug testing kit and it was revealed that the white powder recovered from his possession was heroin weighing 305 grams. Accordingly, the present FIR dated 14.09.2018 was registered and the accused/applicant was arrested. Chargesheet was filed against the applicant under Section 21 of NDPS Act and Section 14 of Foreigners Act. The learned Trial Court had framed charges against accused/applicant under Section 21(b)(ii)(c) NDPS Act *vide* order dated 04.02.2019.

3. Learned counsel for the applicant submits that the applicant was arrested on 14.09.2018 and has been in judicial custody since then. It is stated that applicant has been falsely implicated in present case. It is also stated that applicant was not served with proper notice under Section 50 of NDPS Act which is violation of mandatory provisions of law. It is further stated that only 08 witnesses out of total 14 witnesses have been examined till date. It is argued that the applicant does not have criminal antecedents and the trial will take time to conclude, therefore, bail be granted to him.

4. Learned APP for State, on the other hand, opposes the present bail application and argues that present case is of recovery of commercial quantity of contraband weighing 305 grams. It is also stated that during investigation, no passport was recovered from accused/applicant and therefore, Section 14 of Foreigners Act was added in the chargesheet. It is further stated that upon verifying the



letter of identification issued by High Commission of Nigeria, New Delhi, which was recovered from the applicant, it was revealed that his tourist visa was issued on 11.02.2013 and had expired on 10.03.2013. It is argued that since the accused/applicant is not a permanent resident of India and since the trial is at a crucial stage, therefore, bail application be dismissed.

5. This Court has heard arguments addressed by learned counsel for applicant as well as learned APP for the State and has perused material on record.

6. In the present case, allegations against present applicant/accused, in a nutshell, are that pursuant to receipt of secret information, police officers of Crime Branch, Delhi had apprehended the accused/applicant on 14.09.2018. The applicant was searched and a black-coloured polythene was recovered from his possession which contained a white-coloured powder which was found to be heroin i.e. a derivative of opium, weighing 305 grams. As per FSL report dated 17.12.2018, the powder was found to contain 7.82% of Diacetylmorphine (heroin). The relevant portion of FSL report is reproduced as under:

“On Chemical, TLC, GC & GC-MS examinations

- (i) Exhibit ‘A’ was found to contain ‘Diacetylmorphine’. ‘Acetyl codeine’, ‘Dextromethorphan’ and ‘Caffeine’.
- (ii) Exhibit ‘A’ was found to contain ‘Diacetylmorphine’ 7.82%.”

7. This Court notes that in the present case, recovery of 305 grams of heroin i.e. opium derivative was made from the possession of present accused/applicant, which is commercial quantity of narcotic drugs. A perusal of record also reveals that during



investigation, no passport was recovered from the possession of the accused/applicant. During his personal search, one photocopy of Letter of Identification issued by High Commission of Nigeria, New Delhi mentioning the passport number of applicant as A03965420 was recovered and it was revealed that the applicant had arrived in India on a tourist visa bearing no. V1600451 which was issued on 11.02.2013, however, the same had expired on 10.03.2013.

8. This Court also notes that as per judicial precedents of Hon'ble Apex Court, in cases under NDPS Act, where the trial has been prolonged and the accused has been in judicial custody for more than 5 years and the maximum punishment for the offence alleged is 20 years, the accused may be released on bail. (Reference: ***Satender Kumar Antil v. Central Bureau of Investigation (2022) 10 SCC 51*** and ***Supreme Court Legal Aid Committee (Representing undertrial prisoners) v. Union of India (1994) 6 SCC 731***). However, the present case is distinguishable on the following facts:

- i. The accused/applicant had arrived in India on tourist visa which was issued on 11.02.2013 and had expired on 10.03.2013.
 - ii. No passport has been recovered from the accused/applicant and Section 14 of the Foreigners Act has been invoked against him. The present accused/applicant is a Nigerian national who has been residing illegally in India since 10.03.2013.
9. Although bail cannot be denied to an accused on the ground that he is a foreign national, however, accused/applicant herein had been illegally residing in India since the year 2013 and had indulged



in illicit activities i.e. trade of narcotic and psychotropic substances. The samples of contraband recovered from the accused/applicant were sent to FSL and a positive report in this regard had corroborated the case of prosecution.

10. Considering the overall facts and circumstances of this case, this Court is of the opinion that since the commercial quantity of heroin was recovered from the possession of the accused/applicant, and the applicant was illegally residing in India and did not have a passport, no case for grant of bail is made out at this stage.

11. However, this Court notes that the main aim of the judicial precedents of the Hon'ble Apex Court mentioned in paragraph 08 of this order is to ensure that the trial should not be prolonged, and therefore, this Court deems it fit to direct the learned Trial Court to conclude the trial in the present case within a period of 06 months from receipt of this order, subject to learned counsel for accused and learned APP for State not seeking unnecessary adjournments.

12. Accordingly, present bail application stands dismissed.

14. It is, however, clarified that nothing expressed hereinabove shall tantamount to an expression of opinion on the merits of the case.

15. A copy of this order be forwarded to the learned Trial Court for information and compliance.

16. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

NOVEMBER 3, 2023/kd