



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

Reserved on : 11.04.2023

Pronounced on : 31.05.2023

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+ **BAIL APPLN. 1450/2022**

CHARLES EZIH @ PAPA

..... Petitioner

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

versus

NARCOTICS CONTROL BUREAU

..... Respondent

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

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

RAJNISH BHATNAGAR, J.

1. This is a petition filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in case bearing Crime No. 058/DZU/2018 under Sections 8/21/22/27A/29 NDPS.

2. In brief the facts of the case are that on 22.02.2018, a secret information was received by IO Pradeep Singh that one lady, namely, Sonia Shamrao Naik Gaonkar was travelling in seat no. 41, Bogey (Coach) No. A-4 in Train No. 12954-August Kranti Rajdhani departing from Hazrat Nizamuddin Railway Station to Mumbai and she was carrying Narcotics drug in her travel bag. Based on secret information, Sonia Naik was



intercepted by NCB Team at Hazrat Nizamuddin Railway Station on 22.02.2018 when she arrived near Bogey No. A-4 of August Kranti Rajdhani Express Train destined for Mumbai. The independent witnesses were joined and upon asking Sonia Naik, she showed her e-ticket, Aadhar Card and revealed her identity. During search of her maroon-coloured travel bag, it was found containing some clothes and one packet of grey coloured baby carrier which on further examination was found to contain two more packets of substance detected as Methamphetamine and the total weight of said contraband was found to be 600 grams.

3. Accused Sonia Naik tendered her voluntary statement under Section 67 NDPS Act, wherein, she revealed that she came in touch with one Nigerian person, namely, Cosmos and through him she met his friend Oba at Delhi and subsequently, she started residing with Oba at Uttam Nagar. She disclosed that on 19.2.2018, she came to Delhi and Oba took her to the house of present petitioner, namely, Charles Ezih @ Papa where she met another person, namely, Henry Moses. She disclosed that at the house of the petitioner, she was given the said bag of contraband and was asked to carry it to Mumbai by train. Upon disclosure by Sonia Naik of the address of Charles Ezih @ Papa at WZ-92-B, Sant Garh, Tilak Nagar, Delhi, the NCB Team reached the said premises, where Charles Ezih (petitioner herein) was found. During search of the premises in presence of independent witnesses, 180 grams Cocaine was recovered from the house search of Charles Ezih @ Papa. The same was seized vide Panchnama dated 23.02.2018.



4. During investigation, the petitioner revealed that the contraband concealed in baby Carrier and the Cocaine recovered from his House, both were provided to him by Henry Moses and he further led the NCB Team to his House at Plot No. 57 & 58, Flat No. 5, 1st Floor, Bhagwati Garden, Uttam Nagar, Delhi. After reaching Henry Moses's house, it was found that he had tried to flee from the building and was lying on ground at the backside. Thereafter, he was taken to Hospital for medical help and further search was conducted at Henry's House from where similar baby carrier packets were found as had been seized at the railway station from Sonia Naik's baggage. Accordingly, consequent to the recovery, the petitioner, namely, Charles Ezih @ Papa was arrested on 24.02.2018 and case bearing Crime No. 058/DZU/2018 under Sections 8/21/22/27A/29 NDPS was got registered.

5. I have heard the Ld. Counsel for the petitioner, Ld. Sr. Standing Counsel for NCB and perused the Status Report filed by the NCB.

6. Learned counsel for the petitioner submitted that the petitioner has been falsely implicated in this case and is in judicial custody since 24.02.2018. He further submitted that the petitioner was arrested only on the basis of disclosure statement of the co-accused Henry Moses and further submitted that the recovery from the house of petitioner is planted as even during cross-examination of the Investigating Officer he stated that no inquiry was ever made from the landlord of the house and no rent deed was taken into possession by IO at the time of the raid which shows foul play by the NCB. He further submitted that the petitioner has clean antecedents and



no purpose will be served by keeping the petitioner in judicial custody.

7. On the other hand, learned Sr. Standing Counsel for NCB has vehemently opposed the bail application and has argued on the lines of the status report. It is submitted by the Ld. Sr. Standing Counsel that the petitioner is a foreign national who indulged in illegal trafficking of contraband substances and 180 grams Cocaine which is commercial quantity has been recovered from the house search of petitioner. He further submitted that the matter is at the stage of trial and crucial witnesses are yet to be examined and therefore, releasing the petitioner on bail at this stage will adversely affect the trial. Lastly, he submitted that keeping in view the fact that the petitioner is a foreign national, recovery is of commercial quantity and the serious allegations against the petitioner, there is strong likelihood of him absconding if released on bail.

8. In ***Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) vs. Union of India, [(1994) 6 SCC 73]***, the Hon'ble Supreme Court has observed and held as under:

“15. ... We, therefore, direct as under:

(i) Where the undertrial is accused of an offence(s) under the Act prescribing a punishment of imprisonment of five years or less and fine, such an undertrial shall be released on bail if he has been in jail for a period which is not less than half the punishment provided for the offence with which he is charged and where he is charged with more than one offence, the offence providing the highest punishment. If the offence with which he is charged prescribes the maximum fine, the bail amount shall be 50% of the said amount with two sureties for like amount. If the maximum fine is not prescribed bail shall be to the



satisfaction of the Special Judge concerned with two sureties for like amount.

(ii) Where the undertrial accused is charged with an offence(s) under the Act providing for punishment exceeding five years and fine, such an undertrial shall be released on bail on the term set out in (i) above provided that his bail amount shall in no case be less than Rs 50,000 with two sureties for like amount.

(iii) Where the undertrial accused is charged with an offence(s) under the Act punishable with minimum imprisonment of ten years and a minimum fine of Rupees one lakh, such an undertrial shall be released on bail if he has been in jail for not less than five years provided he furnishes bail in the sum of Rupees one lakh with two sureties for like amount.

(iv) Where an undertrial accused is charged for the commission of an offence punishable under Sections 31 and 31-A of the Act, such an undertrial shall not be entitled to be released on bail by virtue of this order. The directives in clauses (i), (ii) and (iii) above shall be subject to the following general conditions:

- (i) The undertrial accused entitled to be released on bail shall deposit his passport with the learned Judge of the Special Court concerned and if he does not hold a passport he shall file an affidavit to that effect in the form that may be prescribed by the learned Special Judge. In the latter case the learned Special Judge will, if he has reason to doubt the accuracy of the statement, write to the Passport Officer concerned to verify the statement and the Passport Officer shall verify his record and send a reply within three weeks. If he fails to reply within the said time, the learned Special Judge will be entitled to act on the statement of the undertrial accused;*
- (ii) the undertrial accused shall on being released on bail present himself at the police station which has prosecuted him at least once in a month in the case of those covered under clause (i), once in a fortnight in the case of those covered under clause (ii) and once in a*



- week in the case of those covered by clause (iii), unless leave of absence is obtained in advance from the Special Judge concerned;*
- (iii) *the benefit of the direction in clauses (ii) and (iii) shall not be available to those accused persons who are, in the opinion of the learned Special Judge, for reasons to be stated in writing, likely to tamper with evidence or influence the prosecution witnesses;*
- (iv) *in the case of undertrial accused who are foreigners, the Special Judge shall, besides impounding their passports, insist on a certificate of assurance from the Embassy/High Commission of the country to which the foreigner-accused belongs, that the said accused shall not leave the country and shall appear before the Special Court as and when required;*
- (v) *the undertrial accused shall not leave the area in relation to which the Special Court is constituted except with the permission of the learned Special Judge;*
- (vi) *the undertrial accused may furnish bail by depositing cash equal to the bail amount;*
- (vii) *the Special Judge will be at liberty to cancel bail if any of the above conditions are violated or a case for cancellation of bail is otherwise made out; and (viii) after the release of the undertrial accused pursuant to this order, the cases of those undertrials who have not been released and are in jail will be accorded priority and the Special Court will proceed with them as provided in Section 309 of the Code.”*

9. In ***Manoj Kumar Singh vs. The State of West Bengal, [SLP (Crl) No. 4711-4712/2020, decided on 06.10.2021]***, the Hon’ble Supreme Court granted bail considering the fact that the *accused persons are entitled for grant of bail, as they have served more than five years under the judicial*



custody, following the directives in *Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) vs. Union of India (supra)*.

10. In *Satender Kumar Antil v. CBI, [Miscellaneous Application No. 1849 of 2021 in SLP (Crl.) No.5191 Of 2021, decided on 11.07.2022]*, the Hon'ble Supreme Court has observed and held as under:

“47. Under this provision, when a person has undergone detention for a period extending to one-half of the maximum period of imprisonment specified for that offense, he shall be released by the court on his personal bond with or without sureties. The word ‘shall’ clearly denotes the mandatory compliance of this provision. We do feel that there is not even a need for a bail application in a case of this nature particularly when the reasons for delay are not attributable against the accused. We are also conscious of the fact that while taking a decision the public prosecutor is to be heard, and the court, if it is of the view that there is a need for continued detention longer than one-half of the said period, has to do so. However, such an exercise of power is expected to be undertaken sparingly being an exception to the general rule.

Once again, we have to reiterate that ‘bail is the rule and jail is an exception’ coupled with the principle governing the presumption of innocence. We have no doubt in our mind that this provision is a substantive one, facilitating liberty, being the core intendment of Article 21.

11. Reliance can also be placed upon *Jumah Khan vs. The State Govt. Of NCT Of Delhi (BAIL APPLN. 991/2022, decided on 05.01.2023)*, *Rakesh Kumar Bhola vs Directorate Of Revenue Intelligence (BAIL APPLN. 216/2020, decided on 19.10.2022)* and *Sarvan Kumar vs. State (NCT of Delhi) (BAIL APPLN. 956/2022, decided on 18.07.2022)*, wherein



the coordinate benches of this court granted bail considering that *the rigors of Section 37 of the NDPS Act would not come in the way while dealing with a bail application moved by an undertrial who has remained in custody for more than half of the minimum sentence prescribed.*

12. In the instant case, 180 grams Cocaine has been recovered from the house search of the petitioner which is commercial quantity. That being the case, as the recovery is of commercial quantity, it would invite a minimum sentence of ten years extendable to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees.

13. However, without going into the merits of this case, considering the period of incarceration as the petitioner has undergone more than 5 years 1 month and 11 days which is more than half of the minimum sentence of 10 years and since the trial would take a long time to conclude, no fruitful purpose would be served by keeping him detained in prison, therefore, the bail application stands allowed and the petitioner is admitted to bail on his furnishing a personal bond in the sum of Rs. 1,00,000/- with two sureties of the like amount to the satisfaction of concerned trial court subject to the following conditions:

- i) Petitioner will not leave the country without prior permission of the concerned Trial Court and will deposit his passport with the Trial Court. The concerned Trial Court shall also requisition a certificate of assurance from the concerned Embassy/High Commission of the country to which the petitioner belongs, that



the petitioner shall not leave the country and shall appear before the Trial Court as and when required;

- ii) 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;
- iii) 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;
- iv) 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 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;
- v) The petitioner shall not leave the NCT of Delhi without prior permission of the concerned trial court;
- vi) The petitioner shall not indulge in any criminal activity during the bail period.



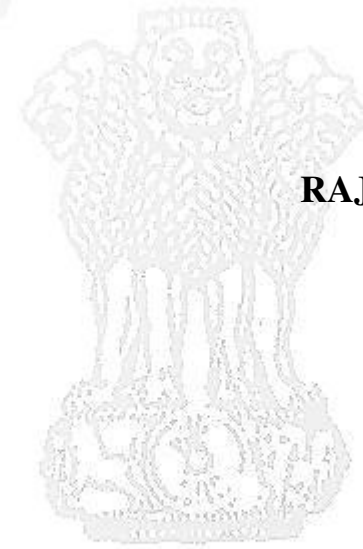
14. The bail application stands disposed of in the aforesaid terms. Pending applications, if any, are also disposed of accordingly.

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

16. Copy of this order be electronically transmitted to Jail Authorities as well as the concerned Trial Court.

RAJNISH BHATNAGAR, J

MAY 31, 2023/_p



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