

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1272 OF 2024

Ugwu Jude Chinonso ... Applicant
Vs.
State of Maharashtra ... Respondent

WITH
BAIL APPLICATION NO.1350 OF 2024

Abel Loukou ... Applicant
Vs.
State of Maharashtra ... Respondent

Mr. Vikas Chavan a/w. Mr. Kamlesh Satre and Mr. Nilesh Bangar for Applicant in BA/1272/2024.

Mr. V. K. Chauhan a/w. Mr. Gaurav Borse for Applicant in BA/1350/2024.

Mr. Sagar R. Agarkar, APP for Respondent-State in both the Applications.

Mr. Shivaji Namdeo Khade, PSI, Kashimira Police Station.

CORAM : MANISH PITALE, J.
DATE : OCTOBER 16, 2024

P.C. :

1. Heard learned counsel for the applicants in these two applications.

2. Both the applicants have been arraigned as accused in connection with FIR No.0474 of 2021 dated 06.07.2021 registered with Kashimira Police Station, District - Mira Bhayander, Vasai Virar, for offences under Sections 8(c) and 21(c) of the Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act). The applicants were arrested on 06.07.2021 and they have remained behind bars since then.

3. The contraband in the present case is alleged to be commercial quantity of *cocaine*. Investigation was completed and charge-sheet was filed. Both the applicants are *Nigerian* nationals.

4. The principal ground raised in these applications pertains to Section 52-A of the NDPS Act. It is submitted that in the present case, the aforesaid mandatory exercise was not carried out before the Magistrate and therefore, the same is fatal for the prosecution case.

5. The learned APP was unable to point out that such an exercise was indeed carried out in the present case. In the case of *Union of India Vs. Mohanlal and another*, **(2016) 3 SCC 379**, the Supreme Court categorically held in paragraphs 14 to 19 that the procedure contemplated under Section 52-A of the NDPS Act is mandatory. This is obviously to maintain the purity of the process of seizure, sampling and the samples being sent for chemical analysis to the concerned laboratory.

6. A perusal of the documents in the present case shows that the samples, collected on 06.07.2021 i.e. the date of registration of the FIR, were directly sent for chemical analysis to the laboratory. This is evident from the chemical analysis report dated 12.11.2021 in the present case. The said report specifically records that samples were received on 06.07.2021 itself.

7. Evidently, there was complete absence of the aforementioned mandatory exercise contemplated under Section 52-A of the NDPS Act. This goes to the root of the matter and indicates that the applicants have indeed made out a strong *prima facie* case in their favour. Since the applicants do not have any criminal antecedents, they have satisfied the twin test contemplated under Section 37 of the NDPS Act for being enlarged on bail.

8. But, it is to be noted that both the applicants are *Nigerian* nationals. The passport of the applicant - Abel Loukou in Criminal Bail Application No.1350 of 2024 was valid on the date of his arrest, but it expired on 05.11.2022. The passport of the applicant - Ugwu Jude

Chinonso in Criminal Bail Application No.1272 of 2024 is valid only till 04.11.2024. These facts are evident from the photocopies of the passports placed on record. In that light, it would be necessary to impose specific conditions, even if the applications are to be allowed in the peculiar facts and circumstances of the present case.

9. In view of the above, the applications are allowed in the following terms:-

- (A) The applicants shall be released on bail in connection with FIR No.0474 of 2021 dated 06.07.2021 registered with Kashimira Police Station, District - Mira Bhayander, Vasai Virar, on furnishing P.R. Bond of Rs.50,000/- each with one or two sureties each in the like amount to the satisfaction of the Special NDPS Court;
- (B) The applicants shall apply for renewal of their passports within two weeks of their release on bail and proof of having applied for such renewals shall be placed on record immediately before the Special NDPS Court where the trial is pending;
- (C) The applicants shall surrender their renewed passports before the aforesaid Court within a week of such renewed passports being issued to the applicants;
- (D) The applicants shall report to Kashimira Police Station on the first and third Monday of every month between 10:00 a.m. and 12 noon during the pendency of the trial;
- (E) The applicants shall attend every date before the concerned Court, unless exempted for the reasons to be recorded in writing. The applicants shall co-operate with the concerned Court for expeditious disposal of the trial;

- (F) The applicants shall not tamper with the evidence of the prosecution. They shall not influence the informant, witnesses or any other person concerned with the case;
- (G) Upon being released on bail, the applicants shall immediately, and in any case within a week, furnish the details of their active mobile numbers and residential addresses to the concerned Court and update about the same, if there is any change.

10. It is made clear that in case the applicants violate any of the aforesaid conditions, particularly conditions (B) and (C), the bail granted by this order shall stand cancelled. It is also clarified that the observations made in this order are limited to the question of grant of bail to the applicants in the present applications and that the concerned Court shall proceed further, without being influenced by the observations made in this order.

11. The bail applications stand disposed of accordingly.

(MANISH PITALE, J.)

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