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

+ **CRL.M.C. 1291/2024**

MARTINS AKURASI

..... Petitioner

Through: Mr. Arun K. Srivastva, Mr. Ashish
Sindhu and Ms. Shahina Praveen,
Advocates.

versus

NARCOTICS CONTROL BUREAU NCB

..... Respondent

Through: Mr. Utsav Bains, SPP for NCB
(through VC).

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

06.03.2024

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1. The present petition under Section 440 read with Section 482 of the CrPC seeks the following prayers:

“In view of the facts and circumstances as stated above and in the interest of justice, it is therefore prayed that this Hon 'ble Court may graciously be pleased to modify the directions in bail order dated 21.07.2023 and subsequent order dated 04.12.2023 passed by Sh. Sudhir Kumar Sirohi, ASJ/Spl. Judge, NDPS, New Delhi in SC No. 9651/2016 reducing the number of surety and also to the extent that Certificate of Assurance from the Embassy, High Commission of Nigeria as one of the conditions of the bail order is not required for release of the petitioner.”

2. Learned counsel for the petitioner submits that the latter was granted bail *vide* order dated 21.07.2023 passed by the learned ASJ subject to conditions, including that he shall furnish a bail bond in the sum of Rs. 1,00,000/- with two sureties of the like amount and that he shall file a



certificate of assurance from the Embassy/High Commission of Nigeria to the effect that he shall not leave the country and shall appear before the Court on each and every date of hearing. It is pointed out that the petitioner could not furnish a surety and therefore, he moved an application seeking modification of the said order. The said application was disposed of by the learned ASJ *vide* order dated 04.12.2023 with the direction that the petitioner shall furnish a personal bond in the sum of Rs. 25,000/- with two sureties of the like amount.

3. Learned counsel for the petitioner submits that due to unavailability of a surety, the latter has not been able to avail the benefit of bail granted to him. It is pointed out that the petitioner has also not been able to furnish a certificate of assurance from the Embassy/High Commission of Nigeria, in terms of order dated 21.07.2023 passed by the learned ASJ. It is prayed that the bail order be modified to enable the petitioner to avail the benefit of the same.

4. With respect to requirement of certificate of assurance, learned counsel for the petitioner places reliance on order dated 16.03.2023 passed by a Coordinate Bench of this Court in **BAIL APPLN. 991/2022** titled '**Jumah Khan v. The State Govt. of NCT of Delhi**', wherein it has been observed and held as under:

“3. Yet another prayer has been made relating to the condition of requisitioning of assurance from the Embassy / High Commission of Afghanistan, the country, to which the petitioner belongs, that the petitioner will not leave the country. Learned counsel for the petitioner has contended that since the change of governance in Afghanistan and new regime, this confirmation may be implausible and would again delay the release of the petitioner.



4. In the opinion of this Court, while these conditions have been imposed in consonance with the decision of Hon'ble Supreme Court in particular as held in *Supreme Court Legal Aid Committee (representing undertrial prisoners) v. UOI* (1994) 6 SCC 73, the Hon'ble Supreme Court has also considered situations where accused are unable to furnish surety and held in decision dated 31st January, 2023 in *Re: Policy Strategy for Grant of Bail* SMWP (Crl.) 4/2021 has issued guidelines including inter alia allowing the concerned courts to suo moto take up the cases and consider whether conditions of bail require relaxation / modification.”

5. With respect to reduction of surety, reliance is placed on order dated 30.01.2024 passed by a Coordinate Bench of this Court in **BAIL APPLN. 1424/2023** titled '**Bartholomew v. The State (NCT of Delhi)**', wherein it has been observed and held as under:

“6. In support of his contention, the learned counsel has also placed reliance on the decision of the Hon'ble Supreme Court in *Ejike Jonas Orji vs. Narcotics Control Bureau* [Crl.A.2468/2023] dated 17.08.2023, whereby the Hon'ble Supreme Court had exempted the appellant therein from complying with the similar condition, which was imposed by the High Court while enlarging a foreign national on bail. The relevant part of the decision reads as under:

“...3. It is submitted by the learned counsel for the appellant that the bail condition imposed by the High Court in its Order dated 13.6.2022 is causing serious prejudice to the accused as the appellant is a Nigerian citizen and the High Commission of Nigeria is unlikely to grant him the certificate of assurance to the effect that the accused shall not leave the country till the trial is concluded and shall appear before the Special Court, on each and every day, unless exempted by the Special Court. It is provided specifically in the impugned order that the accused shall not be released on bail without such a certificate of assurance from the High



Commission of Nigeria.

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6. We have noted the elaborate bail conditions imposed in the High Court's order (13.6.2022). For ready reference they are extracted:-

D. The Special Court will seek a certificate of assurance from the High Commission of Nigeria, New Delhi, that the accused shall not leave the country till the trial is concluded, and shall appear before the Special Court on each and every date, unless exempted by the Special Court in exceptional circumstances. The applicant will not be released on bail in the absence of such a certificate of assurance.

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1. Considering the above, having regard to the other conditions imposed in the bail order dated 13.6.2022, we are of the view that even without satisfying the condition (D), bail can be considered for the appellant who is in custody since 02.6.2014. Accordingly subject to the bail conditions as mentioned in the High Court's order (except the condition (D), the appellant be released on bail as directed vide order dated 13.6.2022."...

7. In view of the submissions of the learned counsel and keeping in perspective the decision in *Ejike Jonas Orji (supra)*, the application of the petitioner deserves to be allowed. Accordingly, the order dated 04.10.2023 is modified to the extent that the petitioner shall be enlarged on bail subject to his furnishing a Personal Bond in the sum of Rs.50,000/- and one Surety Bond of the like amount subject to the satisfaction of the learned Special Judge /Trial Court. Further, the petitioner is also exempted from complying with the condition contained in the latter part of para 5(a) of the said order to the effect that grant of bail to the petitioner is subject to the learned Trial Court/Special Judge requisitioning a certificate of assurance from the concerned Embassy/High Commission of the country to which the petitioner belongs."



6. It is pertinent to note that the petitioner was initially granted bail subject to him furnishing a personal bond in the sum of Rs. 1,00,000/- with two sureties of the like amount. The learned ASJ, *vide* order dated 04.12.2023, has already modified the said condition and reduced the amount of personal bond to Rs. 25,000/- with two sureties of the like amount. In view thereof, in the considered opinion of this Court, the said condition does not require any modification.

7. In the interest of justice, condition no. 8 contained in order dated 21.07.2023, i.e., *'accused will file certificate or assurance from embassy/High Commission of Nigeria that accused will not leave country and shall appear before the Court on each and every date of hearing'* is modified to the extent that the requirement of a certificate of assurance from the Embassy/High Commission of Nigeria is waived, but the petitioner shall appear before the learned Trial Court on each and every date of hearing.

8. The petition is accordingly partly allowed and disposed of.

9. Pending applications, if any, also stand disposed of.

10. Order be uploaded on the website of this Court, *forthwith*.

11. Copy of the order be sent to the concerned Jail Superintendent for necessary information and compliance.

AMIT SHARMA, J

MARCH 06, 2024/sn