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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 1694/2024**
WILLIAM KALALE MAMBWE Petitioner
Through: Mr.Narender Singh, Adv.

versus

NARCOTICS CONTROL BUREAU Respondent
Through: Mr.Shashwat Bansal, SPP

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER
% **29.02.2024**

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr. P.C.') seeking modification of order dated 21.12.2023 passed by the learned Special Judge (NDPS), Patiala House Courts, New Delhi (hereinafter referred to as the 'Trial Court') in SC Case No.175/2021, Crime No. VIII/66/DZU/2020, titled as *NCB v. William Kale Mambawe*.
2. Issue notice.
3. Notice is accepted by Mr.Shashwat Bansal, the learned SPP for the State.
4. It is stated that the petitioner was taken into judicial custody from the IGI Airport, New Delhi on 13.12.2020. By an order dated 21.12.2023 passed by the learned Trial Court, the petitioner was directed to be released on bail subject to *inter-alia* a condition that he shall furnish a Personal Bond and Surety Bond in the sum of Rs.1 lakh with two sureties.



5. The petitioner, contending that the petitioner cannot produce two sureties as he is a foreign national and does not have any known persons in India, and also stating that he belongs to an economically backward country and that it is next to impossible for him to manage the surety to the tune of Rs.1 lakh, filed an application under Section 445 of the Cr.P.C. seeking modification of the terms of the bail order dated 21.12.2023.

6. The said application has been disposed of by the learned Trial Court by the impugned order, reducing the amount of Personal Bond to a sum of Rs.50,000/-, however, maintaining that the petitioner shall produce two sureties of the like amount. The remaining conditions in the order dated 21.12.2023 have been also directed to operate.

7. The petitioner has filed the present petition challenging the condition which requires him to produce two sureties for a sum of Rs.50,000/- each.

8. The learned counsel for the petitioner submits that as the petitioner is unable to produce the said sureties, the order granting him bail will not operate and therefore becomes illusory. He submits that the petitioner has already been in custody for a period of more than three years from the date of his arrest.

9. On the other hand, the learned SPP submits that there can be no variation / modification in the condition imposed by the learned Trial Court, as they are reasonable. He prays that the present petition be, therefore, dismissed.

10. I have considered the submissions made by the learned counsels for the parties.



11. As noted hereinabove, the petitioner was taken into custody on 13.12.2020. It is only after the expiry of three years that he was granted bail on 21.12.2023. The petitioner contends that he cannot comply with the condition of bail requiring him to produce two sureties, as he is a foreign national and has not spent even a single day in India. The bail granted to the petitioner cannot be rendered illusory and the petitioner cannot be continued to be in custodial incarceration in spite of being found worthy to be released on bail.

12. Keeping in view the above, and the judgment of this Court in *Nastor Farirai Ziso v. NCB*, (2022) 2 HCC (Del) 146, the order dated 21.12.2023 read with order dated 22.01.2024, passed by the learned Trial Court, is modified to the limited extent that instead of petitioner producing two sureties of the sum of Rs.50,000/- each, the petitioner shall be released on bail on furnishing Personal Bond in the sum of Rs.50,000/- and depositing cash of Rs.75,000/- in lieu of Surety Bond, to the satisfaction of the learned Trial Court. The other conditions, as stipulated in the order dated 21.12.2023 passed by the learned Trial Court, shall, however, continue to operate as the conditions for releasing the petitioner on bail.

13. The petition is disposed of in the above terms.

NAVIN CHAWLA, J

FEBRUARY 29, 2024/Arya/ss

Click here to check corrigendum, if any