



2024 : DHC : 2653



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on:03.04.2024

+ **BAIL APPLN. 1301/2022**

TOBIAS CHRISTIAN

..... Applicant

versus

NARCOTIC CONTROL BUREAU

..... Respondent

Advocates who appeared in this case:

For the Applicant : Mr. Arun K. Srivastva, Mr. Ashish Sindhu
and Ms. Shaheena Praveen, Advs.

For the Respondent : Mr. Subhash Bansal, Senior Standing
Counsel with Mr. Shashwat Bansal, Adv.

CORAM:

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present application has been filed under Section 439 of the Code of Criminal Procedure, 1973 ('CrPC') read with Section 482 of CrPC seeking regular bail Case No. VIII/64/DZU/2021, for offences under Sections 8(c) and 21(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act'). The applicant was arrested on 27.10.2021, and has remained in custody since then.

2. It is alleged that on 26.10.2021, at about 7:30 pm, on the basis of secret information, a recovery of 150 grams of Heroin was made

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from a red bag being carried by the applicant. It is the prosecution's case that the applicant in his disclosure statement revealed that he was a Nigerian national, who had arrived in India in October, 2012. He revealed that his Visa had expired in November, 2012 and his Passport had expired on 31.05.2017. He further revealed that he was delivering the contraband to a client, at the instance of one person, namely, John, when he was intercepted by the NCB team.

3. During the search of the applicant's house, passport of the applicant and a passport of a Nigerian national, namely Amika Aniedo, was taken for investigation. It was also found that the rent agreement was in the name of Amika Aniedo but bore the passport number of the applicant.

4. The learned counsel for the applicant contended that the recovery of Heroin from the applicant is not corroborated by any independent witnesses and the applicant has been falsely implicated in the present case.

5. He submitted that the contraband allegedly recovered from the applicant is of intermediate quantity and thus the rigors of Section 37 of the NDPS Act are not attracted *qua* the applicant in the present case.

6. He submitted that the search and seizure, in the present case, is riddled with anomalies wherein Section 50 of the NDPS Act was not complied as the search was not conducted in the presence of a Gazetted Officer or a Magistrate due to which the search and seizure stand vitiated.

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7. He further submitted that the sample of the substance was not drawn at the spot of recovery, but after a delay of 55 days, whereby, the possibility of tampering of case property cannot be ruled out.

8. He further submitted that the chargesheet is incomplete in the present case as the same was not accompanied by a FSL Report. He submitted that in such a case, the applicant is entitled to default bail in terms of Section 167(2) of the CrPC.

9. He also submitted that the disclosure statement of the applicant under Section 67 of the NDPS Act was not voluntary and the same is not admissible as evidence.

10. He submitted that the applicant was staying with his country brother Amika Aniedo, and no incriminating material was recovered from his house.

11. On the other hand, the learned Standing Counsel for the respondent strongly opposed the grant of any relief to the applicant. He submitted that the offences alleged against the applicant are serious in nature and there is sufficient material on record that shows that the applicant was involved in drug trafficking.

12. He submitted that in the present case the recovery has been effectuated directly from the applicant.

13. He submitted that the applicant is not entitled to default bail merely because the FSL report was not filed as the lack of the same does not render the charge sheet incomplete.



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14. He further submitted that the application under Section 52A of the NDPS Act for drawl of samples from the recovered substance was made on 29.10.2021 itself.

15. He relied upon the judgments in the cases of *Abdul Hamid Turkman v. Narcotics Control Bureau : Bail Appl. 3864/2022* and *Heera Lal v. State : 104 (2003) DLT 224*, whereby this Court dismissed the bail applications of the accused persons, even though only intermediate quantity was involved, on account of the seriousness of the offence.

16. He further submitted that the passport recovered from the house of the applicant, that is, of the applicant and Amika Aniedo, has not been issued by the competent authority.

ANALYSIS

17. The concern regarding the validity of the applicant's passport has already been dealt with by this Court *vide* order dated 03.05.2023, where the Court held as under:

“4. Upon an application being made by the petitioner, the petitioner's passport which is stated to be lying with the learned trial court, may be released to the petitioner only for purposes of having it renewed or issued afresh. Once renewed/re-issued the passport be deposited back with the learned trial court.

5. Let the needful be done before the next date.”

18. It is relevant to note that the recovery of the contraband was made on 26.10.2021, and the application under Section 52A of the



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NDPS Act was filed on 29.10.2021. Therefore, at this stage, there appears to be compliance of Section 52A of the NDPS Act.

19. It is not disputed that the recovery in the present case has been effectuated from a bag that was carried by the applicant. In such a case, provisions of Section 50 of the NDPS Act are not applicable. [Ref. *Ranjan Kumar Chadha v. State of Himachal Pradesh* : 2023 SCC OnLine SC 1262].

20. It is also contended that non-filing of FSL Report renders a chargesheet incomplete and entitles the accused person to default bail. This issue is pending consideration before the Hon'ble Apex Court. In such a situation, this Court is bound to follow the law laid down in *Kishan Lal v. State* : 1989 SCC OnLine Del 348, whereby the Division Bench of this Court dismissed the plea of default bail by observing that non-filing of FSL Report does not render the chargesheet incomplete. The Coordinate Bench of this Court in *Arif Khan v. State (NCT of Delhi)* : 2023 SCC OnLine Del 2374 had also taken the same view.

21. It is not denied that the contraband recovered from the applicant is Heroin weighing 150 grams which is an intermediate quantity, and the bar under Section 37 of NDPS Act is not attracted.

22. It is also not denied that there is no public witness to the recovery, and apart from the recovery based on the secret information, as alleged by the prosecution, there is no other evidence against the applicant at this stage. The veracity of the search and seizure would be tested during the trial.



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23. The strong reliance is placed by the prosecution on the judgments passed by this Court in the case of ***Abdul Hamid Turkman v. Narcotics Control Bureau*** (*supra*) and ***Heera Lal v. State*** (*supra*). There is no cavil that only because the bar under Section 37 of the NDPS Act is not attracted, the accused would not be entitled for bail automatically. In such circumstances, the Court has to consider the parameters as enshrined in relation to grant of bail. However, at the same time, the period of custody undergone by the accused person cannot be ignored and the same is an important factor to be considered.

24. Speedy trial in the present case does not seem a possibility. The object of jail is to secure the appearance of the accused person during the trial. The object is neither punitive nor preventive and the deprivation of liberty has been considered as a punishment without the guilt being proved. The applicant cannot be made to spend the entire period of trial in custody especially when the trial is likely to take considerable time.

25. It is also not disputed that the applicant has no antecedents, however, keeping in mind the fact that the applicant is a foreigner, appropriate conditions have to be imposed while granting bail, as stipulated by the Hon'ble Apex Court in the case of ***Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India*** : (1994) 6 SCC 731.

26. The applicant is, therefore, directed to be released on bail on furnishing a personal bond for a sum of ₹1,00,000/- with two sureties



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of the like amount, subject to the satisfaction of the learned Trial Court, on the following conditions:

- a. The applicant shall join and cooperate with the investigation as and when directed by the IO;
- b. The applicant will not leave the boundaries of Delhi without prior permission of the Court, and will deposit his passport with the learned Trial Court;
- c. The applicant shall provide the details of his permanent address to the learned Trial Court and intimate the Court, by way of an affidavit, as well as the IO about any change in his residential address;
- d. The applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times;
- e. The applicant shall appear before the learned Trial Court on every date of hearing;
- f. The applicant shall, after his release, appear before the concerned SHO on every Friday at 5 PM;
- g. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
- h. The learned Trial Court is directed to ensure that the certificate of assurance, from the Embassy/ High Commission of the applicant's native country, that is, Nigeria, that the applicant

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shall not leave the country and shall appear before the learned Trial Court as and when required, is placed on record.

27. In the event of there being any FIR/DD entry / complaint lodged against the applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

28. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence the outcome of the Trial and also not be taken as an expression of opinion on the merits of the case.

29. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

APRIL 03,2024
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