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

+ **BAIL APPLN. 1935/2023**

**HENRY JIDEAFOR AKWUOBI
@ RICHARD**

..... Petitioner

Through: Mr. Ashutosh Kaushik and Mr. Rony John, Advocates.

versus

NARCOTICS CONTROL BUREAU

..... Respondent

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

**CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH**

ORDER

23.02.2024

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1. This application has been filed on behalf of the Applicant under Section 439 Cr.P.C. read with Section 482 Cr.P.C. seeking regular bail in Complaint Case No.VIII/14/DZU/2019 under Sections 22(b), 22(c) and 29 of NDPS Act, PS: Narcotics Control Bureau.

2. As per the prosecution case, on the basis of information dated 09.05.2019, Nomsa Lutalo was intercepted at IGI Airport, New Delhi while she was going to Abu Dhabi and was found in possession of 24.700 kgs suspected Pseudoephedrine. On preliminary investigation, Nomsa disclosed that the contraband was given to her by Richard (Applicant) who was residing at P-4, Greater Noida near her house. Based on this information, NCB team reached the stated address and found Richard living in the said house along with his friend Kingsley Ndu Bruno. During the search of the



house, in the presence of Nomsa, Richard and Sophia and independent witnesses, recovery of 1818 kgs of Pseudoephedrine, 138 kgs off-white powdery substance, 1.900 kg Cocaine, 1.8 kgs brown-colour substance- Morphine and other household items was made. After seizure, panchnama was drawn at the spot. Voluntary statements were later given by Nomsa and Sophia, who admitted their involvement in commission of the offence. Nomsa also stated that Richard gave the bag containing Pseudoephedrine. Applicant also tendered his voluntary statement and was arrested on 10.05.2019. Interrogation during the custody of the Applicant, further led to recovery of 88 kgs of Pseudoephedrine, 3.750 kgs of Acetic Anhydride and 20 Alprazolam Tablets from the construction material lying in the basement of the said house at Greater Noida. Recovered substances were seized vide panchnama dated 13.05.2019 in presence of independent witnesses. Upon forensic examination of the samples, total substances seized on 09.05.2019 from House No.A-76 weighed 141.7 kgs and CFSL Hyderabad found the samples positive for Racemethorphan, which is a psychotropic substance. It is further stated in the report that Applicant is a foreign national indulging in illegal trafficking of contraband substances, which is a serious offence. Matter is at the stage of prosecution evidence before the Trial Court and crucial witnesses are yet to be examined. At this stage, there is no reasonable ground to believe that Applicant is not guilty of the offence and is not likely to commit offence while on bail and the rigours of Section 37 of NDPS Act clearly apply as there is recovery of commercial quantity.

3. Learned counsel for the Applicant argues that Applicant has been falsely implicated in the matter. As per the first chemical report rendered by Central Revenues Control Laboratory ('CRCL'), samples drawn from seized



substances were found to be negative for any narcotic drug and psychotropic substance except Alprazolam 20 Tablets of 4.6 gm, which is a non-commercial quantity. Respondent only moved the second application on 26.08.2019 for retesting of samples by Central Forensic Science Laboratory ('CFSL'), Hyderabad, i.e. after a delay of nearly two months from the earlier report dated 20.06.2019, which was impermissible in view of the judgment in ***Thana Singh v. Central Bureau of Narcotics, (2013) 2 SCC 590***, wherein the Supreme Court held that requests for re-testing/re-sampling should not be entertained as a matter of course and in exceptional cases, the application must be moved within 15 days of receipt of the first test report. There is also a discrepancy in the quantity/weight of the samples, which is fatal to the prosecution case as held by the Bombay High Court in ***Abdul Rashid v. State of Maharashtra, (1999) 2 Crimes 362***.

4. *Per contra*, learned Senior Standing Counsel argues that on the disclosure statement of Nomsa Lutalo, recovery of total quantity of 141.7 kgs Racemethorphan was made from the Applicant. Being a commercial quantity, rigours of Section 37 NDPS Act would apply. Charges have been framed against the Applicant for offences under Sections 22(b), 22(c) and 29 of NDPS Act. Report of CRCL, Delhi was not conclusive and therefore, on its recommendation, samples were sent to CFSL, Hyderabad, as per which samples tested positive for Racemethorphan. Samples were duly sealed and sent to Hyderabad and there is no question of any tampering and the difference in weight may be due to method of measuring the samples in standard conditions in CRCL/CFSL and on the spot, where measurements were not under standard conditions. It is not open to the Applicant to question the re-sampling as he never challenged the order of the Trial Court



dated 26.08.2019, allowing the application filed by NCB for sending duplicate and/or fresh samples drawn from the seized contraband for analysis to any Government laboratory/CFSL, Hyderabad.

5. I have heard learned counsel for the Applicant and learned Senior Standing Counsel for NCB.

6. From the status report, it emerges that accused Nomsa was intercepted at IGI Airport while she was on way to Abu Dhabi and 24.7 kgs of suspected Pseudoephedrine was recovered from her. On her disclosure statement, search was carried out at the residential premises of the Applicant, which led to recovery of commercial quantity of contraband from the Applicant. Samples from the recovered substances were sent for analysis to CRCL, Delhi. Total three seizures were made in this case, i.e. 2 seizures on 09.05.2019 and third seizure on 13.05.2019. Contrabands seized during first seizure were marked 'A' and 'B' and those seized during second seizure was marked D1 to D56, H and M. The substance recovered during third seizure was found to contain Alprazolam in the sample marked 'C' in the CRCL report dated 05.07.2019. Since the report was inconclusive for remaining substances, duplicate samples were sent to CFSL, Hyderabad and four samples were found positive for Racemethorphan. In view of Section 27 of Indian Evidence Act, 1872, any recovery made pursuant to a disclosure made by an accused is admissible in law. On disclosure statement of co-accused Nomsa, Applicant was found at the address given by her and on search of the premises, as noted above, commercial quantity of contraband was recovered and panchnama was drawn on the spot on 09.05.2019. Forensic examination has found the sample positive for Racemethorphan, which is a psychotropic substance. Considering that



commercial quantity has been allegedly recovered from the Applicant, rigours of Section 37 NDPS Act would apply to the present case and in view of the overwhelming incriminating material on record, which cannot be glossed over at this stage, there is no reasonable ground to believe that Applicant is not guilty of the alleged offence. Circumstances also point to the fact that Applicant, in conspiracy with other accused, has been involved in drug trafficking for a long time and therefore, it cannot be said that Applicant is not likely to commit any offence, while on bail. Contention of the Applicant that it was not open to the Respondent to send the samples of the recovered substances for re-sampling to CFSL, Hyderabad, has no merit. As a matter of judicial record, the application filed by NCB before the Trial Court seeking permission to send duplicate samples/fresh samples drawn from the seized contraband for analysis to any Government Laboratory/ CFSL, Hyderabad, was allowed by the Trial Court on 26.08.2019, but the Applicant admittedly never challenged the said order. It is, therefore, not open to the Applicant to contest this position at this stage while arguing an application seeking regular bail. Insofar as the alleged discrepancy in the weights of the contrabands recovered is concerned, this would be a matter of trial. No ground for grant of regular bail is made out.

7. Application is accordingly dismissed.

8. At this stage, learned counsel for the Applicant seeks liberty to file a fresh application, as he wishes to raise fresh grounds, which are crucial to the case of the Applicant for seeking bail. Liberty as prayed for is granted, in accordance with law.

JYOTI SINGH, J

FEBRUARY 23, 2024/shivam