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

+ **BAIL APPLN. 2196/2024**

OKOLI ANAYO FRANKLINE

.....Petitioner

Through: Mr. Meghan, Mr Mohd Suza Faisal
Mr. Abhay Katoch, Advocates.

versus

STATE NCT OF DELHI

.....Respondent

Through: Ms. Richa Dhawan, APP for the State
along with SI Rahul Singh Malik.

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

25.10.2024

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1. The instant application under Section 439 of the Code of Criminal Procedure, 1973 (now Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023) has been filed on behalf of the applicant seeking grant of regular bail in FIR bearing no. 168/2021 registered at Police Station - Maurice Nagar, for offences punishable under Sections 21(C)/22 read with Section 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter "NDPS Act") and Section 14 of the Foreigners Act, 1946.

2. Learned counsel for the applicant submitted that the applicant has been falsely implicated in the present case and he has not committed any offences as alleged in the aforesaid FIR.

3. It is submitted that the applicant is not having any conspiracy with any of the co-accused and the applicant cannot be imputed with any knowledge once the bag is recovered from the co-accused from whom the



alleged contraband was recovered. It is also submitted that when there is no other material on record, except that the applicant was accompanying the co-accused in a car, the same cannot decisively determine any knowledge upon the present applicant.

4. It is submitted that the recovery has not been affected from the possession of the applicant but from the co-accused namely Mr. Ora Gevisin @ Leonard who has already been granted bail *vide* order dated 25th October, 2023 by the learned Court below on the ground that there is significant difference of weight of one sample that reached to the FSL for analysis

5. It is submitted that since the recovery of contraband (drugs) has been doubted by the Court concerned while granting the bail to the co-accused from whom the recovery was made, the instant applicant may also be enlarged on bail as he is on a better footing than the co-accused.

6. It is also submitted that for considering the question of bail for the offences punishable under Sections 21(C)/22 read with 29 of the NDPS Act, the twin conditions of Section 37 may be considered as per the judgment passed by the Hon'ble Supreme Court in the case of ***Mohd. Muslim v. State (NCT of Delhi)***, **2023 SCC OnLine SC 352**. Learned counsel has relied upon the ratio of the said judgment particularly in paragraph no. 19.

7. It is submitted that the applicant has been languishing in jail since 10th November, 2021 and has completed about three years, and till now only charges have been framed and no prosecution witnesses has been examined.

8. In view of the above facts and circumstances it is prayed that the applicant may be granted bail.

9. *Per contra*, Ms. Richa Dhawan, learned APP for the State vehemently opposed the instant application and submitted that the applicant was



involved in a similar case in past and he was granted bail on 29th September, 2020 in the said case, and thus, it is an admitted fact that he has violated the conditions of the earlier bail order by again committing offences punishable under the NDPS Act.

10. It is submitted that the judgment which has been relied upon by the learned counsel appearing on behalf of the applicant does not prescribe for diluting twin condition of Section 37 of the NDPS Act and it is apparent from the material on record that the applicant has violated the conditions of bail on earlier occasion in a different case involving offences of similar nature.

11. It is further submitted that the applicant is a foreign citizen and since there is no permanent address of the applicant, he becomes a flight risk, and thus, the instant application may be dismissed.

12. Heard learned counsel appearing on behalf of the parties and perused the contents made in the instant application.

13. This Court has also perused the ratio of the judgment upon which the learned counsel appearing on behalf of the applicant has relied upon and this Court is of the considered view that the ratio of the said judgment is not applicable in the instant matter as the material on record clearly depicts that that after being released on bail in another case which involved offences of similar nature, the accused/applicant violated the conditions of the bail order. Therefore, there is no satisfaction of the twin conditions of Section 37 of the NDPS Act and this Court is of the considered view that in terms of the intent of the statute the applicant has failed to put forth any propositions to seek regular bail.

14. In view of the above facts and circumstances, this Court is not



satisfied with the contentions advanced on behalf of the applicant and does not find any reason to allow the instant application to enlarge the applicant on bail. Therefore, the instant application is liable to be dismissed.

15. Accordingly, the instant bail application stands dismissed along with the pending applications, if any.

CHANDRA DHARI SINGH, J

OCTOBER 25, 2024

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[Click here to check corrigendum, if any](#)