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

+ **BAIL APPLN. 2806/2024**

FRANCIS OGADINMA IROEGBUPetitioner

Through: **Mr. Rohan Gupta, Adv.**

versus

STATE (NCT OF DELHI)Respondent

Through: **Ms. Meenakshi Dahiya, APP for the
State and SI Sumit Kumar and SI
Partap Singh PS Mohan Garden.**

**CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA**

**ORDER
03.12.2024**

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1. The present bail application has been filed under Section 439 r/w Section 482 Cr.P.C. seeking bail in SC No. 57/2022 arising out of FIR No. 528/2021 under Section 21 NDPS Act, 420/468/471 IPC r/w Section 14A Foreigner's Act registered at PS Mohan Garden.
2. Briefly stated the case of the prosecution is that on 22.09.2021, while ASI Manoj Kumar was on patrolling duty along with his team a call was received that a Nigerian person namely Aristide Kuyo is living at H.No. 149 Gali No. 36, Vipin Garden Extension Mohan Garden, New Delhi without visa. On this ASI Manoj Kumar along with his team reached the said location. Further at around 06:55 PM one Nigerian person carrying a black color bag on his shoulder was seen coming



inside the building. On appearing to be suspicious, the person was checked and found to have contraband drug substance and his identity came to be known as Francis Ogadinman Iroegbu S/o Christian i.e., the present petitioner. After completion of the formalities, the search was conducted, and the petitioner was found to be in possession of 1.7 Kg of heroin. The sampling was done and after investigation the charge-sheet was filed.

3. Learned counsel for the petitioner submits that the petitioner is in custody since 22.09.2021. It has been submitted that the charge-sheet has already been filed and the trial may take a long time. Therefore, the petitioner may be admitted to bail. Learned counsel also submits that out of 24 witnesses only 08 witnesses have been examined so far. Learned counsel submits that on account of prolonged trial the petitioner may be admitted bail.
4. Learned APP for the State has vehemently opposed the bail application and submits that merely on the ground of delay the bail cannot be granted to the petitioner. Reliance has been placed upon order dated 28.09.2022 passed in *Mohd. Akhtar @ Raja vs. State of NCT of Delhi* in Bail Application 84/2024. Learned APP for the State has further submitted that the petitioner is a foreign national and if the petitioner is released on bail, the petitioner may not attend the trial.
5. The question of admitting the accused on bail on account of prolonged incarceration has come up for discussion in several cases before the Apex Court. In *Union of India v. K.A. Najeer* reported as (2021) 3



SCC 713 dated 01.02.2021, the Apex Court stated that if a timely trial is not possible, courts are ordinarily obligated to release the under trial on bail and statutory restrictions do not exclude the discretion of Constitutional courts to grant bail on grounds of violation of Fundamental Rights enshrined in Part III of the Constitution. While the said judgement was passed in the context of UAPA, the said observations merit mention:-

“xxx 12. Even in the case of special legislations like the Terrorist and Disruptive Activities (Prevention) Act, 1987 or the Narcotic Drugs and Psychotropic Substances Act, 1985 (“the NDPS Act”) which too have somewhat rigorous conditions for grant of bail, this Court in Paramjit Singh v. State (NCT of Delhi), Babba v. State of Maharashtra and Umarmia v. State of Gujarat enlarged the accused on bail when they had been in jail for an extended period of time with little possibility of early completion of trial. The constitutionality of harsh conditions for bail in such special enactments, has thus been primarily justified on the touchstone of speedy trials to ensure the protection of innocent civilians.

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15. This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In Supreme Court Legal Aid Committee (Representing Undertrial Prisoners v. Union of India, it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, the courts are tasked with deciding whether



an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.

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17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

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6. Recently, vide order dated 14.09.2023 passed in ***Man Mandal & Anr. vs. The State of West Bengal*** in SLP No. 8656/2023 the Apex Court admitted the accused on bail on the ground that the petitioner was in custody for almost two years and the trial was not likely to be taken up for hearing in the immediate near future.
7. Similarly, in ***Jitendra Jain vs. NCB & Anr.*** in SLP No. 8900/2022 the Apex Court vide order dated 06.12.2022 noted that though it was a case of commercial quantity and allegations leveled against the petitioner were serious in nature, but having regard to the fact that the petitioner



was in custody for 02 years and the conclusion of trial will take time, the petitioner was admitted to bail.

8. Similarly, the Apex Court in ***Javed Gulam Nabi Shiakh vs. State of Maharashtra and Another*** vide order dated 03.07.2024 in SLP No. 3809 of 2024 the relied on ***Gudikanti Narasimhulu & Ors. Vs. Public Prosecutor*** (1978) 1 SCC 240 and *inter alia* observed that bail is not to be denied as a punishment as the requirement of bail is merely to secure the attendance of the prisoner at trial. Reliance was also placed in ***Gurbaksh Singh Sibba v. State of Punjab*** (1980) 2 SCC 565 and ***Hussainara Khatoon v. Home Secy. State of Bihar*** (1980) 1 SCC 81.
9. Vide order dated 13.07.2023 passed in ***Rabi Prakash v. State of Odisha*** 2023 SCC OnLine SC 1109 where the accused had remained incarcerated for more than three and a half years, the Apex Court while releasing the petitioner on bail *inter alia* observed that the prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37 of the NDPS Act.
10. The coordinate bench of this Court in Bail Application No. 1727/2024 titled as ***Puneet Gupta vs. NCB (Delhi Zonal Unit)*** vide order dated 18.07.2024 admitted the accused to bail on ground of prolonged incarceration. The coordinate bench of this Court in Bail Application No. 563/2024 titled ***Igboanusi Raphael Chiemelie V. CBI*** vide order dated 22.08.2024 noted that the apprehension that the petitioner being a



foreign national will flee the country can be addressed by imposing conditions.

11. In the present case the petitioner is in custody since September 2021. The trial is likely to take long time. In the facts and circumstances and also applying the parameters enunciated by the Apex Court, this Court is inclined to grant bail to the Petitioner, subject to the following conditions:

- i. The Petitioner shall furnish a security for the sum of Rs.1,00,000/- with two sureties of the like amount to the satisfaction of the Trial Court/Magistrate/Duty Magistrate.
- ii. The petitioner shall furnish a valid visa in his favour. In case, the petitioner does not have a valid visa, he shall be at liberty to apply for the visa and till the time he gets the visa, he shall be kept in the detention/deportation centre.
- iii. The concerned Trial Court shall also requisition a certificate of assurance from the concerned Embassy/High Commission of the country to which the petitioner belongs that the petitioner shall not leave the country and shall appear before the Trial Court as and when required;
- iv. The petitioner shall provide his mobile phone number to the Investigating Officer (IO) concerned at the time of release, which shall be kept in working condition, and any change of the same shall be intimated to the IO concerned, during the period of bail.
- v. The Petitioner shall deposit his passport, if not already impounded by the Police, before the learned Trial Court.



- vi. The Petitioner is directed to give an address in Delhi, where he will reside during the trial, to the Trial Court and to the Investigating Officer (IO). The Investigating Officer is directed to verify the address given by the Petitioner. The Petitioner is directed not to change the given address without informing the Investigating Officer.
 - vii. The Petitioner shall not leave the NCT of Delhi without the permission of the Trial Court.
 - viii. Even though the chargesheet has been filed, the Petitioner shall report to the concerned Police Station thrice a week, i.e., every Monday, Wednesday and Friday at 10:00 AM and shall be released by 11:00 AM after completing all the formalities.
 - ix. The Petitioner is directed not to tamper with the evidence.
 - x. The Petitioner is directed to appear before the Trial Court on all dates of hearings without fail.
 - xi. The Petitioner is directed not to indulge in any similar/same activity.
 - xii. Violation of any of the aforesaid conditions shall lead to cancellation of bail granted to the Petitioner by this Court.
12. The bail application stands disposed of.
13. Copy of this order be sent to the concerned Jail Superintendent for necessary compliance.

DINESH KUMAR SHARMA, J

DECEMBER 3, 2024/AR/KR