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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 2967 OF 2024

Ifeanyi Louis Aniyu

Applicant /
.. Accused No.2

Versus

The State of Maharashtra

.. Respondent

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- Mr. Kiran Gogavale, Advocate for Applicant.
- Ms. Savita M. Yadav, APP for Respondent – State.
- Mr. Nilesh Shevale, API – Nerul Police Station, Navi Mumbai present.

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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 03, 2025.

P.C.:

1. Heard Mr. Gogavale, learned Advocate for Applicant and Ms. Yadav, learned APP for Respondent – State.

2. This is an Application under Section 439 of the Code of Criminal Procedure, 1973 (for short “**Cr.P.C.**”) seeking Regular Bail in connection with C.R. No.337 of 2023 registered with Nerul Police Station, Navi Mumbai for the offences punishable under Sections 8(c), 22(c) and 29 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (for short “**NDPS Act**”). Applicant before me is Accused No.2.

3. On receiving specific information the officials of the Narcotics Control Bureau apprehended and arrested both Accused on

the intervening night of 03.08.2023 and 04.08.2023. Accused No.1 was found in custody 36 grams MD whereas Accused No.2 i.e. Applicant before me was found in custody 53 grams MD as per the memorandum panchnama.

4. Accused No.2 refused to produce himself before the Magistrate and was accordingly searched. Though it is stated in the seizure panchnama appended at page No.56 of the Application that Accused No.2 refused to be searched before the Magistrate and accordingly signed on the letter served on him comprising of his search under Section 50 of the NDPS Act, it is *prima facie* seen from the said letter appended at page No.61 of the Application that Accused No.2 namely Applicant before me has not signed the said letter. The said letter does not bear the signature of the panch either who was present on the very incident spot at the time when the aforesaid exercise was being carried out.

5. Second dichotomy that is noted by the Court is with respect to quantity of the contraband recovered from the Applicant. Remand report which is prepared on the following day i.e. 04.08.2023 appended at page No.35 of the Application in so far as the Applicant before me is concerned notes that the alleged contraband recovered from the Applicant is worth Rs.5,30,000/-. However, the weight and quantity of the alleged contraband is stated in hand writing as 53

grams in brackets.

6. As opposed to this, memorandum panchnama i.e. seizure panchnama effected at the time of raid and appended at page No.54 of the Application when read at page No.58 shows that the alleged contraband recovered from Applicant was approximately 53 grams and it was marked as Sample "C". Once again in the report appended to the panchnama prepared on the following day i.e. on 04.08.2023 the weight of the alleged contraband recovered from the Applicant is shown as 53 grams.

7. However two months later when the said alleged contraband is weighed before the Magistrate, there are two specific discrepancies which are noted. Firstly the weight of the alleged contraband is shown as around 53.41 grams and secondly if the certificate of the Magistrate is perused in paragraph Nos.5 and 6 thereof the certificate certifies that the weight of the alleged contraband is around 36.04 grams and after sealing the bag 'C' i.e. sample "C" as per the memorandum panchnama alongwith previous packing materials after re-packing and re-sealing in a new brown colour envelope, the total weight is 54.81 grams. The provisions of the NDPS Act, in such cases are required to be adhered to strictly and followed.

8. Ms. Yadav, learned APP would vehemently submit that the offence is of a serious nature as recovery of the alleged contraband is

of commercial quantity coupled with the facts that Applicant is a Nigerian national and would urge that Applicant should not be released on bail as such he would be a menace to the Society as there is no guarantee that he would not repeat the offence. She would submit that the Applicant has one antecedent in the past which needs to be taken in account by the Court.

9. As noted above, in so far as the alleged recovery from the present Applicant who is arraigned as Accused No.2 is concerned, *prima facie* I see clear discrepancy in the quantity and weight of the alleged contraband which has been recovered. That apart, weight of the polythene bag in which the said alleged contraband was kept and the recovered is not stated anywhere during the aforesaid seizure exercise.

10. The actual weight of the alleged contraband clearly differs in the memorandum panchnama and the certificate given by the Magistrate. That apart, quantity of the alleged contraband on the date of this recovery raises a doubt as delineated herein above. The most important clinching fact which persuades me to consider the submissions made by Mr. Gogavale, learned Advocate for Applicant is non-compliance of the provisions of Section 50 of the NDPS Act in such a case of chance recovery in a public place when the memorandum panchnama itself states that Applicant has not appended his signature

on the letter issued to him at the time of the recovery and seizure. The said letter appended at page No.61 of the Application speaks for itself. Rather it is a blank letter without his signature.

11. In that view of the matter and in view of the decisions of the Court in so far as relating to individual act of the Applicant before me with respect to the quantity of the alleged contraband, a serious doubt arises.

12. The quantity as can be seen is slightly over the commercial quantity of the alleged contraband and therefore even though it can be argued that rigours of Section 37 of the NDPS Act would apply in the facts of the present case considering that the precise weight of the bag in which the said alleged contraband was carried is not placed before me by the prosecution, I would have to give the benefit of doubt to the Applicant. That apart, non-compliance of Section 50 of the NDPS Act is a serious breach which has been noted by the Court in the present case.

13. In view of the above, Bail Application is therefore allowed on the following terms and conditions:-

- (i) Applicant – Ifeanyi Louis Aniyu is directed to be immediately released on bail on furnishing P.R. Bond of Rs.1,00,000/- with one or two sureties of the like amount;

- (ii) Applicant shall report to the Investigating Officer of the Nerul Police Station, Navi Mumbai, twice a month on the first and third Monday of every month between 12:00 noon to 02:00 p.m. and as and when called by the Investigating Officer;
- (iii) Applicant shall co-operate with the conduct of trial and attend the Trial Court on all dates, unless specifically exempted and will not take any unnecessary adjournments, if he does so it will entitle the prosecution to apply for cancellation of this order;
- (iv) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (v) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner;
- (vi) Applicant shall keep the Investigating Officer informed of his current address and mobile contact number and / or change of residence or mobile details, if any, from time to time, as applicable;
- (vii) The concerned prosecuting Agency shall immediately communicate this order of grant of bail to the concerned Registration Officer appointed under Rule 3

of the Registration of Foreigners Rules, 1992 within the meaning of the Foreigners Act, 1946. This condition is added in view of the decision of the Supreme Court in the case of *Frank Vitus Vs. Narcotics Control Bureau and Ors.*¹.

(viii) Any infraction of the conditions shall entail prosecution to apply for cancellation of bail granted to the Applicant.

14. Needless to say, violation of any of the aforesaid conditions would make the Applicant liable to face proceedings for cancellation of bail. It is also clarified that the observations made in this order are limited to the question of grant of bail to the Applicant in the present Application and that the Trial Court shall proceed further without being influenced by the observations made in this order.

15. Mr. Gogavale, learned Advocate for Applicant states that the passport of the Applicant is presently with his wife at present. Applicant's wife is directed to deposit his passport with the Investigating Officer immediately before his release from the prison as a condition precedent for release of bail of Applicant considering that he is a foreign national. The Investigating Officer shall deposit the passport with the Trial Court within one week thereafter.

¹ Criminal Appeal No.2814-2815b of 2024 decided on 06.01.2025

16. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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