



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

Reserved on : 17.04.2023

Pronounced on : 02.06.2023

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BAIL APPLN. 3083/2022

KINGSLEY NWANNE

..... Petitioner

Through: Mr. Tarish V. Sathe, Advocate.

versus

NARCOTICS CONTROL BUREAU

..... Respondent

Through: Mr. Subhash Bansal, Sr. Standing
Counsel with Mr. Shashwat Bansal,
Advocate.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

RAJNISH BHATNAGAR, J.

1. The present petition has been filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in case No. VIII/01/DZU/2021 under Sections 21(c), 23(c) and 29 NDPS Act registered at Police Station NCB RK Puram.
2. In brief the facts of the case are that the NCB received a secret information on 27.01.2021 that two women, namely, Jascent Nakalungi and Sharifah Namaganda, both from Uganda were expected to arrive at T-3 IGI Airport, New Delhi on 28.01.2021 and were suspected of carrying significant amounts of narcotic drugs. On 28.01.2021, NCB Team arrived at Terminal 3 of IGI Airport in New Delhi and while the surveillance was



being conducted in the arrivals hall, two passengers with the same identities arrived at the belt. The NCB team stopped them and when Jascent Nakalungi's sky blue trolley bag was examined, it was found having one black coloured packet which further had two polythene packets, one containing 4 kgs of '*Heroin*' and other containing 560 grams of '*Cocaine*'. Thereafter, when Sharifah Namaganda's brown-coloured trolley bag was examined, it was found having one black coloured packet which further had two polythenes, one containing 4 kgs of '*Heroin*' and other containing 510 grams of '*Cocaine*'. The recovered contraband was seized as per law in presence of independent witness. During Panchnama, a receipt of Test and Fly (Receipt no. 13181) was recovered along with their travel documents on which Vikas Puri, Pastry Place (Outer Ring Road) 8929857072 KC was written in hand. On initial inquiry, it was revealed by Jascent Nakalungi that she was going to deliver both the bags to one person in Vikas Puri near Pastry Place, Outer Ring Road, New Delhi and she also disclosed one Indian Mobile Number being 8929857072. The NCB team proceeded to Pastry Place at Vikas Puri with Sharifah Namaganda and Jascent Nakalungi, and at the location, Sharifah Namaganda called on mobile phone no. 8929857072. After some time, one person came and met Sharifah and Jascent and at that very time, he was intercepted by the NCB team and when we was asked about his identity, he disclosed his name as Kingsley. In the said inquiry, it was revealed by Kingsley (petitioner herein) that he came to receive the baggage containing drugs from both the ladies Sharifah and Jascent. During the course of investigation, accused persons Jascent Nakalungi, Sharifah Namaganda and the present petitioner/accused tendered their voluntary



statements under section 67 of the NDPS Act. As a result, the aforesaid case was registered against the accused persons including the present petitioner.

3. I have heard the learned counsel for the petitioner, learned Senior Standing Counsel for NCB and perused the status report filed by the NCB.

4. Learned counsel for the petitioner submitted that petitioner is in judicial custody since 28.01.2021 and has been falsely implicated in this case only on the basis of disclosure statement of coaccused. He submitted that no recovery has been effected from the petitioner and only allegation against the petitioner is that of conspiracy and in furtherance of the said conspiracy, the petitioner was to receive a consignment of Narcotics from the two co-accused ladies from Uganada. He further submitted that the prosecution has failed to establish a connection between the two coaccused persons and the petitioner herein, and has also failed to attract the rigors of Section 37 of the NDPS Act by not dispensing its burden of proof at a higher plethora of evidence. He further submitted that in the panchnama proceedings also, there is no mention of the petitioner or his number, and thereafter, on subsequent improvements the number '8929857072' was shown to be handwritten at the back of the Test and Fly Receipt along with letters 'KC' which shows manipulation and foul play done by the NCB officials in their investigation. Although, the phone number '8929857072' was being used by the petitioner but it had not been issued in the name of the petitioner and the sim card registered in the name of one Rambhu Sah, resident of H.No. 335 Delhi, Khatri Boli, Delhi. Lastly, he submitted that the trial would take a long time to conclude and therefore, no fruitful purpose



will be served by keeping the petitioner in judicial custody. Ld. counsel for the petitioner in support of his contentions has placed reliance on *Tofan Singh vs. State of Tamil Nadu (Crl. Appeal No. 152/2013)*, *Hanif Khan @ Annu Khan vs. Central Bureau of Narcotics (Crl. Appeal No. 1206/2013)* and *Shyam Babu Saxena vs. State of NCT of Delhi (Bail Appln. 3452/2020)*.

5. On the other hand, learned Sr. standing counsel appearing on behalf of NCB has vehemently opposed the bail application and has argued on the lines of the status report. He further submitted that prima facie case of conspiracy has been established and there is embargo under Section 37 of NDPS Act as the recovery of contraband is of commercial quantity. He further submitted that petitioner is a foreign national involved in illegal trafficking of commercial quantity of contraband and the total recovery in this case is of 8 kgs of Heroin and 1070 grams of Cocaine. He further submitted that the matter is at the stage of trial and crucial witnesses are yet to be examined. He further submitted that keeping in view the recovery of commercial quantity from coaccused persons and the serious allegations against the petitioner, there is strong likelihood of him absconding if released on bail.

6. In the present case, one black coloured packet which further had two polythene packets, one containing 4 kgs of 'Heroin' and other containing 560 grams of 'Cocaine' was recovered from co-accused Jascent Nakalungi's sky blue trolley bag and one black coloured packet which further had two polythenes, one containing 4 kgs of 'Heroin' and other containing 510



grams of '*Cocaine*' was recovered from Sharifah Namaganda's brown-coloured trolley bag. It is also pertinent to note that the total quantity of contraband recovered in this case is 8 kgs of *Heroin* and 1070 grams of *Cocaine* which falls under the commercial quantity and embargo of Section 37 of the NDPS Act is applicable.

7. The scheme of Section 37 NDPS Act reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 of the Cr.P.C., but is also subject to the limitation placed by Section 37 which commences with non-obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second is that the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.

8. The expression "*reasonable grounds*" means something more than prima facie grounds. It contemplates substantially probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence.



9. As far as the contention of the Ld. Counsel for the petitioner that no recovery has been effected from the petitioner, the same has no force in it as mere absence of possession of the contraband on the person of the accused-petitioner herein, does not absolve him of the level of scrutiny required under Section 37(1)(b)(ii) of the NDPS Act. Reliance can be placed upon *Union of India through Narcotics Control Bureau, Lucknow vs. Md. Nawaz Khan, Criminal Appeal No. 1043 of 2021 (Arising out of SLP (Crl) No.1771 of 2021)* and *Union of India v. Rattan Mallik [(2009) 2 SCC 624]*.

10. In the instant case, the petitioner came at the spot i.e., Pastry Place, Vikas Puri on call being made by the co-accused Sharifah Namaganda from where he was arrested, as per the allegations the petitioner was to receive the contraband which was to be delivered to him at the place of his arrest which prima facie shows his involvement in the present case.

11. Therefore, looking into the entire circumstances of the present case and the fact that 8 kgs of Heroin and 1070 grams of Cocaine which is commercial quantity has been recovered from the co-accused persons with whom the petitioner was in touch and had also come to receive the baggage containing said contraband from both the co-accused persons, there are no reasonable grounds for believing that the petitioner is not guilty of the offence. That being the case, the limitations prescribed for the grant of bail under Section 37 NDPS Act are not satisfied and thus, no benefit can be given to him at this stage. The bail application is, therefore, dismissed.



12. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of this case.

RAJNISH BHATNAGAR, J

JUNE 2, 2023/p

