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

Date of Reserve: 27<sup>th</sup> January, 2011

**Date of Order: February, 2011**

**+ Bail Appln. No. 1373/2010**

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**Vargas Joseantonia Mauricio**

**11.02.2011**

**...Petitioner**

Versus

**DRI**

**...Respondent**

**Counsels:**

Mr. Sanjiv Kuamr for petitioner.  
Mr. Satish Aggarwal respondent.

**JUSTICE SHIV NARAYAN DHINGRA**

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

**ORDER**

1. This application under Section 439 Cr.P.C has been preferred by the petitioner by the accused/ petitioner who is involved in a case under NDPS Act and from whom 11.976 kg of heroin was recovered.

2. The only ground taken by the petitioner/applicant for grant of bail is that the applicant in his statement under Section 67 of NDPS Act has stated that two suitcases from which heroin was recovered were handed over to him by a person Sunny whose address in India he did not know. Sunny met him in Jalandhar, Punjab in Radisson Hotel and became his friend and while he was leaving for London, he handed over to him two suitcases and asked him to hand over the same to his sister in London. He had met Sunny for the first time in Jalandhar. He agreed to deliver suitcases for no consideration. Sunny had dropped him at Delhi by a cab and he stayed in Radisson Hotel in room

number 449 and next day he came to board the flight. He had carried with him 6000 Canadian dollars for his expenses in India when he arrived here and he had no knowledge if the suitcases were having heroin. He had checked them and they were only having clothes.

3. A self-exculpatory confessional statement is no ground to acquit an accused or to grant him bail. In order to grant bail in a case under NDPS Act, the Court has to come to a conclusion that the accused most likely had not committed the offence. In the present case, the accused/ applicant had checked in only two suitcases as his baggage and these two suitcases were retrieved on identification of the accused himself from the conveyer belt. These two suitcases had false bottom to conceal the heroin. The heroin weighing around 12 kg was recovered from the false bottoms of the suitcases. Above these false bottoms clothes and blankets were found. The plea taken by the accused that he had no knowledge and both these suit cases were handed over to him by Sunny cannot be believed on the face of it since he was leaving for London after a long stay in India and after visiting many places. He could not have lived in India without his own baggage and would not have carried with him only two suitcases handed over to him by Sunny for giving to somebody in London. If these two suitcases were handed over to him by Sunny, where was his own baggage? The other factor which raises doubt upon his version is his inability to give phone number or address of Sunny despite his claim that Sunny had been roaming around with him at different places in India and he had stayed in India with Sunny at different places and contacted Sunny several times on his phone. No one can contact another person on telephone without knowing his phone number. The phone number is to be either remembered or saved in phone memory or written in a diary. As per accused, Sunny was with him till previous day as he left him at Delhi. Obviously, the accused would have contacted Sunny when he reached the airport. Despite all this, the accused failed to give his own phone number or the phone number of Sunny or address of Sunny. He had also failed to give the address of the recipient of

the baggage. He could not have accepted baggage without knowing the address of recipient in London. I, therefore, consider that the story put forth by the accused/ applicant of having received this baggage from Sunny and having no knowledge, was a false story. Even otherwise, he by just holding the bags would come to know that the bags were extraordinary heavy. The accused stated that the bags contain nothing but clothes. The presence of false bottom and large quantity of heroin in the bags would have increased the weight of each bag more than 6 kg each and additional false plates at the bottom would have startled the accused if the baggage had not belonged to him. I believe that the accused tried to befool the authorities in his statement under Section 67 of the NDPS Act. The accused was very much in the conscious possession of heroin and it seems that he was the actual smuggler of heroin and that is why he was found in possession of huge quantity of heroin. I find no reason to consider that he was an innocent person. The bail application of the applicant is hereby dismissed.

4. The opinion expressed hereinabove is tentative and only prima facie.

**February 11, 2011**  
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**SHIV NARAYAN DHINGRA, J**