

Chiammanda Okoro@ Sophia@ Kamano Marie vs Narcotic Control Bureau on 6 September, 2023

Author: Amit Bansal

Bench: Amit Bansal

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 2768/2022

CHIAMMANDA OKORO@ SOPHIA@ KAMANO
MARIE

Through: Mr.Anoop Kr. Gupta,
Gupta and Mr.Roha
Advocates.

NARCOTIC CONTROL BUREAU

Through: Mr.Subhash Bansal,
Counsel with Mr.Rag
Advocate.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

% 06.09.2023

1. By way of the present application, the applicant seeks grant of regular bail in SC 317/2019 under Sections 21/22/25A/28/29/30 Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS, Act).

2. The case of the prosecution is as under-

(i) On the basis of information received, one of the co-accused Ms. Nomsa Lutalo was intercepted at the Indira Gandhi International Airport on 9th May, 2019 and 24.700 Kgs of Pseudoephedrine was seized from her baggage.

(ii) Subsequently, on the basis of preliminary investigation of Ms Nomsa Lutalo and information received, the house of the co-accused, Richard, This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 16/09/2023 at 17:16:54 residing in Greater Noida, was searched and 1818 Kg Pseudoephedrine, 1.9 Kg Cocaine, 138 Kg Unknown substance and 1.8 Kg Morphine were recovered. Forensic laboratory examination of the samples seized from Richard's house found them to contain psychotropic substances.

(iii) The applicant was arrested on 11th May, 2019 and has since been in judicial custody.

3. Counsel for the applicant submits that applicant was not found in possession of any contrabands. The contrabands were recovered from the house of co-accused Richard where she was only residing as a friend. It is stated that the applicant has no connection with the drugs recovered from the co-accused. Reliance is placed on the statements of the co-accused made to the Narcotics Control Board (NCB) wherein nothing incriminating has been said about the applicant.

4. Counsel for the applicant submits that she has been in judicial custody since 11th May, 2019 and till date only two witnesses have been examined. Reliance is placed on the judgment dated 13th July, 2023 passed by the Supreme Court in Rabi Prakash vs. State of Orissa, in Special Leave to Appeal (Crl.) No. 4169 /2023 followed by coordinate bench in Trandipp Singh vs. N.C.B, in order dated 9th August, 2023 in Bail Appln. 1061/2022.

5. Per contra, learned standing Counsel for the NCB opposes the grant of bail on the ground that huge amount of recoveries have been made from the premises where the applicant was staying with the co-accused. It is further submitted that the applicant is a foreign national and does not have a valid Indian visa.

6. I have heard the counsel for the parties.

7. In Rabi Prakash (supra), the Supreme Court was dealing with a case This is a digitally signed order.

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"2. The prosecution case appears to be that the police party while on patrolling duty on 02.10.2019 at about 12.30 p.m. on Nandapur-Semiliguda road MDR-55, spotted one full body twelve wheeler Truck (Eicher) bearing No.EB-13-BD-5753 coming from Nandapur side at a high speed and accordingly they chased and detained the truck at Bodenga Chhak and found three persons boarded in the said truck including the driver. Eventually, 247 kg. Ganja was recovered from the truck. The petitioner was

one of the occupants of the truck and was arrested at the spot. He has been in custody for more than three and a half years. There are no criminal antecedents against the petitioner.

3. We are informed that the trial has commenced but only 1 out of the 19 witnesses has been examined. The conclusion of trial will, thus, take some more time.

4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent - State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. 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(1)(b)(ii) of the NDPS Act."

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8. The aforesaid observations were relied by the coordinate bench in Trandipp Singh (supra) to grant bail to an accused who had spent 3 years and 8 months in custody and only 4 out of the 18 witnesses had been examined in trial.

9. In the present case, it appears that no recoveries have been made from the person of the applicant. The recoveries have been made from the other co-accused and from the house of the co-accused, Richard, where the applicant was residing as a friend. At this stage, there is nothing to suggest that the applicant was aware of contraband substances in the said house.

10. As noted above, the applicant has been in judicial custody since 11th May, 2019 and till date only two witnesses have been examined.

11. The applicant has spent 4 years and 4 months in custody and the trial is likely to take long time. Further, it is not the case of the respondent that the applicant has criminal antecedents.

12. Considering the facts noted above and taking into account that the trial is likely to take some time, the applicant cannot be kept under incarceration for an indefinite period of time. Therefore, this Court considers it fit to grant bail to the applicant.

13. For the forgoing reasons, the petition is allowed and the applicant is directed to be released on furnishing a personal bond in the sum of Rs. 50,000/- with one surety of the like amount subject to the satisfaction of the Trial Court and further subject to the following conditions:

i. The applicant shall not leave the country without the prior permission of the trial Court.

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iii. The applicant shall join investigation as and when called by the Investigating Officer (IO) concerned.

iv. The applicant shall provide his latest/fresh mobile numbers to the IO concerned, which shall be kept in working condition at all times and shall not switch off or change the mobile number(s) without prior intimation to the IO concerned. The applicant shall keep his live location on at all times. v. The applicant shall provide his permanent address to the Trial Court. The petitioner shall intimate the Court by way of an affidavit and to the IO regarding any change in his residential address. vi. The applicant shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses or tamper with the evidence of the case.

14. Counsel for the respondent submits that one of the conditions for bail should be that a certificate of assurance be obtained from the concerned embassy that the accused shall not leave the country. However, the Hon'ble Supreme Court in its recent order dated 17th August, 2023 in Criminal Appeal No. 2468/2023, relying upon judgments in Hussainara Khatoon vs. Home Secy., State of Bihar (1980) 1 SCC 81 and Mohd Muslim @ Hussain vs State (NCT of Delhi) 2023 SCC Online SC 352, has dispensed with such a condition. Hence, I do not deem it appropriate to impose such a condition in the present case.

15. Needless to state that any observations made herein are purely for the purposes of deciding the question of grant of bail and shall not be construed This is a digitally signed order.

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16. Accordingly, the petition is disposed of.

AMIT BANSAL, J.

SEPTEMBER 6, 2023 rt This is a digitally signed order.

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