

# Ejike Jonas Orji vs Narcotics Control Bureau on 21 February, 2023

**Author: Prateek Jalan**

**Bench: Prateek Jalan**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ BAIL APPLN. 997/2022 (Disposed off case)

EJIKE JONAS ORJI.

Through: Mr. Adarsh Priyadarshi,

versus

NARCOTICS CONTROL BUREAU

..... Responde

Through: Mr. Subhash Bansal, SSC with Mr.  
Shashwat Bansal, Advocates.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% 21.02.2023 CRL.M.A. 16310/2022(Application for modification of bail order dated 13.06.2022 in Bail Appl. No. 997/2022)

1. This application has been filed by the applicant in Bail Appl. No. 997/2022 seeking modification of the judgement of this Court dated 13.06.2022, by which the applicant- accused was granted bail in Sessions Case No. 9080/2016, registered by the Narcotics Control Bureau, Delhi Zonal Unit, Government of India [hereinafter, "NCB"], under Sections 8(c), 20, 21, 22 and 23 of the Narcotic Drugs and Psychotropic Substances Act, 1985 [hereinafter, "the NDPS Act"].

2. By the judgment dated 13.06.2022, the applicant, a citizen of Nigeria, was granted bail in view of his prolonged incarceration of more than 8 years as an undertrial prisoner, relying upon the judgment of the Supreme Court in Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) vs. Union of India and Other (1994) 6 SCC 731 [hereinafter, "SCLAC"], and several judgments of co-ordinate benches of this Court, in which the principles laid down in SCLAC judgment were followed.

3. The modification sought by the applicant is with regard to deletion of a condition incorporated in paragraph 25(D) of the judgment dated 13.06.2022, to the effect that the Special Court would seek a certificate of assurance from the High Commission of Nigeria, New Delhi that the applicant will not

leave India until the trial against him is concluded.

4. At the outset, it may be noted that the applicant is accused of committing an offence which would normally attract the rigours of Section 37 of the NDPS Act. However, the Supreme Court in SCLAC has held that the delay in trial, read with the stringent provisions of Section 37 of the NDPS Act, would jeopardise the fundamental rights of the accused, as guaranteed under Articles 14, 19 and 21 of the Constitution of India. In these circumstances, the Supreme Court directed that bail may be granted after a certain period of incarceration depending upon the classification of the offence.

5. The relevant extracts of the SCLAC judgment have been set out in the judgment of this Court dated 13.06.2022. As far as the present application is concerned, paragraph 15(iv) of the judgment is relevant, which reads as follows:-

"15- xxxx xxxx xxxx xxxx xxxx

(iv) in the case of undertrial accused who are foreigners, the Special Judge shall, besides impounding their passports, insist on a certificate of assurance from the Embassy/High Commission of the country to which the foreigner-accused belongs, that the said accused shall not leave the country and shall appear before the Special Court as and when required;"

(Emphasis supplied)

6. Mr. Adarsh Priyadarshi, learned counsel for the applicant, draws my attention to various orders passed by the Special Court, pursuant to the judgment of this Court dated 13.06.2022, wherein the Special Court noticed that no certificate of assurance has been furnished by the High Commission of Nigeria, New Delhi. The applicant, therefore, continues to remain incarcerated.

7. Mr. Priyadarshi submits that, although the condition of which modification is sought is derived from the judgment of the Supreme Court in SCLAC, it has effectively rendered the grant of bail to the applicant futile. He draws my attention to recent judgments and orders of the Supreme Court in support of his submission that conditions of bail ought to be such as are within the control of the accused to satisfy, and ought not to be so onerous as to render the grant of bail itself futile. In fact, Mr. Priyadarshi submits that the High Commission has taken a policy decision that it cannot monitor or track the movements of any Nigerian residing in India. A submission of the Ministry of External Affairs, Government of India, to this effect has been recorded by this Court in an order dated 30.01.2023 in Bail Appl. No. 3705/2020.

8. In support of this application, Mr. Priyadarshi relies upon the following judgments/orders of the Supreme Court and this Court:-

a. In *Parvez Noordin Lokhandwalla v. State of Maharashtra* (2020) 10 SCC 77 (paragraphs 16, 18 and 22), the Supreme Court has emphasised that bail conditions must be reasonable, and capable of compliance.

b. In *Satender Kumar Antil vs. CBI* (2022) 10 SCC 51 (paragraph 83), the Supreme Court emphasised that it would defeat the objective of release to impose a condition which is impossible of compliance. The requirements of special statutes such as the NDPS Act are dealt with in Category "C" of the aforesaid judgment, wherein the judgment in *SCLAC* has also been referred to. Paragraph 15 of the *SCLAC* judgment, including the condition with which we are concerned in this application, has been quoted in paragraph 88 therein. The Supreme Court has thereafter issued certain directions, including a direction upon the High Courts to undertake the exercise of finding out the undertrial prisoners who are not being able to comply with the prevailing bail condition so that appropriate action can be taken under Section 440 of the Code of Criminal Procedure, 1973.

c. In *Guddan @ Roop Narayan vs. The State of Rajasthan* (order dated 03.01.2023, passed in Criminal Appeal No. 120/2023), the Supreme Court reversed onerous conditions which were imposed by the trial court for the grant of bail.

d. In an order of the Supreme Court dated 31.01.2022, passed in *Suo Motu Writ Petition Criminal No. 4/2021*, directions have been given in respect of cases where a prisoner remains incarcerated despite grant of bail for want of compliance with the bail condition. The Supreme Court has inter alia directed the concerned court to suo motu take up the case if bail bonds are not furnished within one month from the grant of bail, and to consider whether the conditions of bail require modification.

e. A co-ordinate Bench of this Court in *Bail Appl. 1791/2022 [Bethlehem Alias Nunu vs. Narcotics Control Bureau]*, has modified the bail conditions by deleting the requirement of certificate of assurance from the High Commission of the country to which the applicant therein belonged, in a case registered under the NDPS Act.

9. Mr. Shashwat Bansal, learned counsel for the Narcotics Control Bureau, on the other hand, opposes the modification of the conditions laid down in the judgment dated 13.06.2022, and submits that the judgment of the Supreme Court in *SCLAC* clearly lays down the requirement of a certificate of assurance from the High Commission of the country of the accused, as a condition for the grant of bail. He distinguishes the order of this Court in *Bethlehem* (supra) on the ground that the Court there was concerned with a prayer for release of the accused on interim bail on medical grounds, and that the nationality of the applicant therein was itself in doubt.

10. Having heard learned counsel for the parties, I am of the view that the relief sought by the applicant in this application cannot be granted by this Court.

11. The judgment of this Court dated 13.06.2022 is predicated primarily upon the judgment of the Supreme Court in *SCLAC*, and the judgments of this Court relying upon the said judgment of the Supreme Court. The condition imposed by the Supreme Court in paragraph 15(iv) of *SCLAC* does not, in my view, admit of any ambiguity. The Supreme Court, while balancing the constitutional rights of undertrial prisoners with the statutory provisions, has laid down that, in the case of foreign nationals, the Special Judge shall, besides impounding their passports, "insist on" a certificate of assurance from the Embassy or the High Commission of the country to which the foreigner accused

belongs. The directions of the Supreme Court being mandatory, this Court cannot permit a departure therefrom.

12. With regard to the judgments/orders of the Supreme Court and this Court cited by Mr. Priyadarshi, there is no doubt that the discretion of the Court in imposing conditions for the grant of bail ought to be reasonably and judiciously exercised. However, in a case squarely covered by a judgment of the Supreme Court - indeed, where bail has been granted primarily relying upon that very judgment - it would not be an appropriate exercise of jurisdiction of this Court to modify the condition imposed in terms of the express mandate of the Supreme Court.

13. The order of this Court in Bethlehem (supra) is also, in my view, distinguishable from the case of the present applicant. The said case is one wherein the accused was to be released on interim bail on medical grounds. In fact, the applicant therein had not been incarcerated for a prolonged period in terms of the judgement of the Supreme Court in SCLAC, and bail was not granted pursuant to that said judgment. Further, the origin of the applicant therein, and her perceived status as a national of Myanmar, was itself in doubt. The Court has noticed this position in paragraphs 7, 8 and 12 of its order dated 08.02.2022, and it is clearly a factor which weighed with the Court in modifying the bail condition. In the present case, the aforesaid order is not applicable, inasmuch as there is no dispute that the applicant is a national of Nigeria.

14. For the reasons aforesaid, I do not consider it appropriate to modify the conditions of bail contained in the judgment dated 13.06.2022.

15. The application is, therefore, dismissed.

PRATEEK JALAN, J FEBRUARY 21, 2023 'pv'/