

# Ogbuigwe Ifeanyi vs Narcotics Control Bureau on 15 March, 2022

**Author: Manoj Kumar Ohri**

**Bench: Manoj Kumar Ohri**

\$~11

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.A. 156/2020

OGBUIGWE IFEANYI

..... Appell

Through Mr. Kanhaiya Singhal Prasanna an

Mr. Priyal Garg, Advocates

Mr. J.S. Kushwaha, Advocate

versus

NARCOTICS CONTROL BUREAU

..... Respondent

Through Mr. Shashwat Bansal, Advocate fo

Mr. Subhash Bansal, Sr. Standing

Counsel, NCB.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

% 15.03.2022 CRL.M.(Bail) 252/2020 (SOS)

1. At the outset, Mr. J.S. Kushwaha, Advocate, who was earlier appearing for the appellant, seeks discharge from the case. It is ordered accordingly.

2. The present application has been filed under Section 389 Cr.P.C. on behalf of the appellant seeking suspension of sentence in Case No.SC/8734/16.

3. Learned counsel for the appellant submits that in the present case, there was an alleged recovery of 240 gms. of heroin each from two parcels. However, insofar as the contraband stated to be found in the recovered packages was mixed and samples drawn, without ensuring that the packages were identical in all material aspects, the sampling procedure adopted by the concerned Officer was in complete violation of Standing Order No.1/88 dated 15.03.1988 issued by the NCB and Standing Order No.1/89 dated 13.06.1989 issued by the Department of Revenue, Ministry of Finance, Government of India, and thus illegal.

4. In support of his submissions, reliance is placed by the learned counsel on the decision of a Co-ordinate Bench of this Court in Basant Rai v. State reported as 2012 SCC OnLine Del 3319 and the decision of the Supreme Court in Tofan Singh v. State of Tamil Nadu reported as (2021) 4 SCC 1. Attention is also drawn by the learned counsel to the decision in Mokibe Mrlepile Moses v. Narcotics Control Bureau reported as 2021 SCC OnLine Del 3314, where after referring to Amani Fidel Chris v. Narcotics Control Bureau reported as 2020 SCC OnLine Del 2080 with respect to the

issue of sampling, a Co-ordinate Bench of this Court acquitted the appellant for offences under the NDPS Act and held as follows:-

"40. It is incumbent upon NCB to have at least tested and ensured that the contents of each of the pouches are tested on a Field Testing Kit and further, ascertain that each of the one hundred and forty eight packages were identical in volume, weight and size. However, the NCB officials had failed and neglected to do the same. On mixing the substance from each of the pouches, the identity of the substances in each pouch was lost and a sample drawn from the mixture did not establish that the content of the sample was identical to the substance in each of the pouches."

5. Learned counsel has further referred to the Nominal Roll of the appellant placed on record, to submit that the appellant, as on date, has undergone nearly 09 years 02 months and 02 days out of total sentence of 10 years awarded to him.

6. Mr. Shashwat Bansal, learned counsel appearing for NCB, on the other hand, has opposed the present application. However, without prejudice to the rights and contentions of the respondent, he has submitted that the facts of the present case are covered by the decision of this Court in Amani Fidel Chris (Supra).

7. In Amani Fidel Chris (Supra), the procedure for sampling of narcotic substances was discussed by this Court at length. After alluding to the relevant Standing Orders, it was observed:-

"16. A combined reading of paras of the Standing Orders would show that where more than one container/package is found, the respondent is required to draw a sample from each of the individual container/package and test each of the sample with the „field testing kit . It is further provided that if the container/packages are identical in shape, size and weight then lots of 10 or 40 containers/packages may be prepared and thereafter representative samples from each container/package in a particular lot are to be drawn, mixed and sent for testing.

17. Mixing of the contents of container/package (in one lot) and then drawing the representative samples is not permissible under the Standing Orders and rightly so since such a sample would cease to be a representative sample of the corresponding container/package.

xxx

33. Resultantly, this court is of the view that the samples sent to the CRCL were not the representative samples. Besides, by mixing the contents of all the 4 packets before drawing any sample not only the sanctity of the case property in the individual packet was lost but also the evidence as to how much each individual packet weighed. In reaching the aforesaid conclusion, I also draw support from the decisions in Shajahan v. Inspector of Excise (DB) reported as 2019 SCC OnLine Ker 3685 Kulwinder Kumar

v. State of Punjab, reported as 2018 SCC OnLine P&H 1754 and Santosh Kumar v. The State of Bihar passed in Criminal Appeal (SJ) No. 158/2016 decided on 30.08.2019."

(emphasis added)

8. In view of the decisions cited hereinabove, it is apparent that the sampling in the present case was not done in accordance with prescribed procedure. Accordingly, the bar under Section 37 NDPS Act on grant of bail is met.

9. Keeping in view the aforesaid, the appellant's sentence is suspended during the pendency of the present appeal, on his furnishing a personal bond in the sum of Rs.1,00,000/- with one surety of the like amount to the satisfaction of the concerned Court/Registrar (Appellate) and subject to him providing his mobile number at the time of furnishing of personal bond, which shall be kept operational at all times during the period of his release, and also subject to the following further conditions:-

(i) The appellant shall regularly appear before the Court as and when the appeal is taken up for hearing.

(ii) In case of change of residential address and/or contact details, the appellant shall promptly bring the same on the record of this case.

(iii) The appellant shall surrender his Passport to the concerned Investigating Officer.

10. With the above directions, the application is disposed of.

11. A copy of this order be communicated electronically to the concerned Jail Superintendent for information and necessary compliance.

12. Copy of this order be also uploaded on the website forthwith.

1. Admit.

2. List the appeal in due course at its own turn.

MANOJ KUMAR OHRI, J MARCH 15, 2022/v [Click here to check corrigendum](#), if any