

Bail Application no. 373/2024
DRI Vs. Zaka S. Zhimo

23.03.2024.

This is an application u/s 439 Cr.P.C. for grant of regular bail moved on behalf of applicant/accused Zaka S Zhimo.

Present: Ms. Mala Sharma, Ld. counsel for DRI.

Accused produced from JC.

1. It was argued on behalf of the applicant that he belongs to a respectable family of Sumi Tribe of Nagaland and his father serves as a pastor in a church in Dimapur. It was further been argued that it is clear from the narrative of the prosecution that the applicant was not involved in smuggling of contraband but had active merely as an intermediary, unaware of the contents of the consignment. It was further been argued that as per the own case of the prosecution, the contraband was not recovered from the possession of the accused and that neither there is any conscious possession nor constructive possession of the contraband and for the said reason, presumptions u/s 35 and 54 of the NDPS Act also cannot be drawn against the applicant. It was further argued that the consignment was addressed in the name of one Madhu N. Asanuo and not the accused and that the prosecuting agency has failed to establish any incur connection of the applicant with the allegedly recovered contraband. It was further been argued that the entire case of the prosecution hinges upon statement u/s 67 of the NDSP Act which is not admissible and cannot be used against accused. It was further argued that the prosecution was required to prove each link in the chain of circumstances to

demonstrate a connection between the consigner and the consignee which it has failed to do and hence, the applicant is entitled to be released on bail.

2. Ld. SPP assisted by IO opposed the application on the grounds of seriousness of allegations. It was argued that the present bail application is not maintainable as the previous bail application was withdrawn from the Hon'ble Delhi High Court whereby leave was granted to withdraw the application to file afresh application only after hearing on the point of charge before the Trial Court. It was further argued that no fresh ground or change in circumstance has been shown after dismissal of previous bail application on merit. It was further argued that there is sufficient evidence on record to show the complicity of the accused in the conspiracy to smuggle the contraband into India and that the applicant has failed to clear the twin conditions of SECTION 37 of NDPS Act.

3. I have considered the rival contentions and perused the record.

4. As per the case of prosecution, a suspicious consignment was intercepted at courier terminal of IGI Airport, New Delhi. Same was found to have been booked from South Africa and the name of consignee was Madhu N. Asanuo, Safdarjung Village, New Delhi. As per the description, it claimed to contain traditional jewellery articles, however, upon examining the same, 490 grams of Heroin was recovered from the same.

5. During the course of investigation, a trap was laid using one identical dummy box and the DRI officers

apprehended the applicant accused from Humayunpur, Safdarjung Enclave. During the search of the premises, mobile phone of the applicant was recovered and on forensic examination of the same, it was revealed that there was no person by the name of Madhu N. Asanuo and that it was the applicant/accused who had submitted fake documents in the name of Madhu N. Asanuo for clearance of the consignment. It was revealed that the applicant was regularly following up and tracking the consignment carrying the contraband and had also received the OTP which was required for delivery of the said consignment. He had also uploaded KYC documents including fake Aadhar card and fake rent agreement, for clearance of the consignment by using fake documents carrying his photographs but in the name of Madhu N. Asanuo. During the course of the investigation, statement of landlord was also recorded who stated that the applicant had approached him to prepare false rent agreement, however, he refused for the same.

6. The above material, prima facie, shows the active involvement of the applicant/accused in commission of the crime to facilitate smuggling of contraband into India. The judgments relied upon by Ld. counsel for the applicant accused would not come to his aid in view of the peculiar facts of the present case and in view of the overwhelming material regarding prima facie involvement of the accused.

7. In the light of above discussions, I am of the opinion that the applicant/accused has not been able to clear the twin hurdles of Section 37 of NDPS Act and is not entitled to be

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released on bail. Accordingly, **the present bail application of applicant/accused Zaka S. Zhimo is dismissed.**

Copy of the order be given dasti.

(Gaurav Gupta)
Spl. Judge-NDPS/ASJ (South)
Saket Courts, New Delhi/23.03.2024