

11.10.2023

Present :- Ms. Mala Sharma, Ld. Counsel for the DRI.
Sh. Amanpreet, Ld. Counsel for the applicant / accused.

Arguments addressed by Ld. Spl. PP and Ld. Counsel for the applicant / accused Zaka has already been concluded.

1.0 It was argued by the Ld. Counsel for the applicant / accused that he has been falsely implicated and that nothing was recovered from the possession or at the instance of the applicant / accused. It was further argued that the only material against the applicant / accused is the statement u/s 67 NDPS Act which is inadmissible in view of the decision in *Toofan Singh Vs. State of Tamil Nadu, (2021) 4 SCC 1*. It was also argued that there is nothing on record to show that the applicant was in conscious or constructive possession of the recovered contraband and that DRI has failed to establish any link of the applicant with the recovered contraband as the parcel from which the alleged recovery was made was addressed to one person namely Madhu N Asanuo who has no relation or connection with the applicant / accused. It was also argued that whatsapp chats, if any, can only be looked up during trial and the same cannot be the reason to deny the benefit of bail to the applicant / accused.

1.1 Ld. Spl. PP assisted by IO has opposed the bail application by filing their reply. It was argued that even though the package was addressed to one Madhu N Asanuo, however, the mobile phone of the applicant / accused was mentioned on the same and that the address on the package was incomplete which was knowingly done as it would not have been possible to deliver the package without contacting the person whose mobile phone number was mentioned on the package. It was further argued that during the course of investigation, forensic examination of the mobile phone of the accused was done which revealed that he was regularly tracking the consignment in question and had also used the same for OTP generation and to upload the OTPs as well as several documents with regard to the consignment in question. It was further argued that the forensic examination also revealed that in the past also the applicant / accused had uploaded KYC documents in the name of Madhu N Asanuo for clearance of other consignments which shows the *modus operandi* used by the applicant / accused to smuggle contraband into the country. It was also argued that the copy of fake Aadhar submitted for the clearance of the consignment would also show that the same is in the name of Madhu N Asanuo but the photograph on the same belongs to the applicant / accused which clearly points towards his involvement in the clearance of consignment containing the contraband substance.

2.0 Arguments heard. Record perused.

3.0 As per the allegations appearing in the complaint, on the basis of specific intelligence, officers of DRI had intercepted suspicious consignment at Courier Terminal of IGI Airport, New Delhi. In the presence of witnesses, the consignment of DHL Express which was booked from South Africa and destined to Madhu N Asanuo, Safdarjang Village, New Delhi bearing AWB No. 6851560623 was opened and on examination about 490 gms of heroin was recovered from the same. During the course of investigation, the applicant / accused was apprehended and lateron, 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 for clearance of the consignment. It was revealed that the applicant / accused was receiving these consignments on behalf of one Eche who could not be traced out despite best efforts.

3.1 Investigation also revealed that the applicant / accused had submitted fake Aadhar card as well as forged rent agreement for clearance of the consignment. Statement of the landlord is also on record who stated that the applicant had approached him to prepare a false rent agreement, however, he refused for the same. As per the forensic examination of the mobile phone, the applicant / accused had been regularly tracing the consignment carrying the contraband and the same

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also revealed that the applicant / accused had received OTPs in connection with delivery of the said consignment. No just that, he had also uploaded the KYC documents for clearance of such consignments and the same have already been found to be fake documents. The above material prima facie points towards involvement of the applicant / accused in commission of the crime.

4.0 Having regard to the facts and circumstances of the case, I am of the opinion that the applicant / accused has not been able to overcome the twin hurdles of Section 37 NDPS Act and hence, he is not entitled to be released on bail. Hence, **the bail application of accused Zaka S Zhimo is dismissed.**

The application is disposed off accordingly.

Copy of the order be given dasti

(Gaurav Gupta)
Special Judge-NDPS/ASJ (South)
Saket Courts/11.10.2023