

**Bail application IA/1/2022
FIR No428/22
P.S.Tilak Nagar
State Vs Ismael
u/s 21 of NDPS Act**

01.10.2022

Present application u/s 439 of Cr.P.C. filed on behalf of accused Ismael for regular bail is taken up today.

Present: Sh. K.D. Pachauri, Ld. Addl. PP for State.
Sh Kuldeep Rai , Ld Counsel for applicant/ accused
IO ASI Charan Singh is present in person with police file

Reply to the bail application is filed. Copy is supplied.

1. It is submitted on behalf of applicant/ accused that accused is in JC since 07.05.2022 and he is aged about 43 years and belongs to Africa Origin. It has been further submitted that applicant/ accused has been falsely implicated in the present case and nothing incriminating has been recovered from his possession. It is further submitted that investigation has been completed in the present case and the chargesheet has already been filed and further custodial interrogation is not required. It is further submitted that police have failed to reveal source or supplier of the contraband and any buyer or customer with whom applicant/ accused was engaged in the sale/

purchase of contraband. It is further submitted that the applicant/ accused was arrested on the basis of disclosure statement of co-accused. It has been further submitted that applicant/ accused is neither carrier nor supplier or part of any kind of cartel and syndicate and further, applicant is not even a consumer of any kind of contraband and therefore, neither Section 22 nor Section 25 of NDPS Act is made out. It has been further submitted that till date FSL result has not been filed and accused is in JC for more than 6 months, no such search was conducted in the presence of Magistrate or any other Gazetted officer and even the disclosure statement of accused has been recorded in Hindi, a language not known to the applicant/ accused nor any public person has joined the investigation. It has been further submitted that accused was residing in India on the basis of permission granted by UNHRC, New Delhi as asylum seeker and in this regard a photocopy of the letter issued from the said office and copy of order dated 27.10.2021 of the Court of Sh Puneet Nagpal, Ld MM-07, are filed on record. It has been further submitted that accused is ready to abide by all the terms and conditions. Thus, it has been prayed that the accused may kindly be released on bail. The reliance is placed on behalf of applicant/ accused upon the following judgments:

- i) Case titled as Tofan Singh vs State of Tamil Naidu reported in 2020 SCC online SC 882
- ii) State of Punjab vs Baldev Singh (1999) 6SCC 172
- iii) Arif Khan @ Agha Khan vs State of Uttrakhand (2018) 18SCC380.

iv) State of Punjab vs Balvir Singh (1999) 3SCC 294

v) Pooranmal vs Directorate of Inspection (Investigation) of Income Tax, New Delhi reported in 1974 SC 348.

2. On the other hand, reply to bail application and previous conviction report are filed. Bail application is opposed on behalf of State submitting that the recovery effected from the accused is of intermediate quantity and he has been previously involved in cases u/s 14 of Foreigners Act. It is further submitted that there is likelihood that accused may flee away from the jurisdiction of this Court or may tamper with the evidence or may repeat the similar kind of offence. Thus, it is prayed that present bail application may kindly be dismissed.

3. Heard the rival submission and perused the record.

4. It is the case of prosecution that on 06.05.2022, the police officials were patrolling at around 01.30 am near Sports Complex main road Tilak Vihar, Delhi. It is alleged that police officials saw one Nigerian who was standing near the Sports Complex. Upon suspicion, the Nigerian started walking to the opposite side and tried to flee away from the said spot. It is further alleged that two police officials namely HC Ramesh Chand and Ct Sunil got apprehended the Nigerian person who threw a plastic packet on the road which was of dark brown substance. Thereafter, he was arrested and he was found in possession

of 54.80 gms of Heroin and during interrogation he disclosed his name as Ismael r/o Ivory cost.

6. It is trite principle of law that while granting bail the court has to keep in mind (a) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made; (b) the antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of cognizable offence; (c) the possibility of the applicant to flee from justice; (d) the possibility of the accused's likelihood to repeat similar or other offences; (e) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her; (f) Impact of grant of bail particularly in cases of large magnitude affecting a very large number of people; (g) The court should consider reasonable apprehension of tampering of the witnesses or apprehension of threat to the complainant and any other aspects of the case should be taken into consideration while granting bail.

7. Further, the menace of selling of Smack / heroin has become rampant and the young generation is being seriously indulged in consumption of the contraband and in this regard, Hon'ble Supreme Court of India in case titled as "*Union of India Vs Ram Samujh & Ors.*" 1999 (9) SCC 429, has elaborated that offences under NDPS Act

are even more serious and grave than Murder cases. The Apex Court observed, “It is to be borne in mind that the aforesaid legislative mandate is required to be adhered to and followed. It should be borne in mind that in a murder case, the accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instrumental in causing death or in inflicting death blow to a number of innocent young victims, who are vulnerable; it causes deleterious effects and a deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely. Reason may be large stake and illegal profit involved. This line of reasoning has been reiterated in the pronouncement in **“State of Kerala Vs Rajesh” in Criminal Appeal No.(S). 154157 of 2020** (arising out of SLP (Crl.) No.(s).7309-7312 of 2019) decided on 24.01.2020 by the Hon’ble Supreme Court of India.

8. It has been held by the Hon'ble High Court of Delhi in **“Athar Pervez vs State” (Crl. Ref. 1/2015, decided on 26.01.2016)** that the power to grant interim bail is to be sparingly used, when intolerable grief and suffering in the given facts may justify temporary release. It has been further held that while rejecting or accepting an application for grant of “interim” bail, the trial Court will keep in mind the strict provisions of Sec 37/32 of NDPS Act and only when there are compelling reasons which would justify and require the grant of **FIR no. 428/22** **State vs Ismael** **Page no . 5/7**

“interim” bail, should the application be allowed. It was further held that the Court must take into account whether or not the accused/convict is likely to commit or indulge in similar violations.

9. In view of the aforesaid discussion after having heard the rival submissions on behalf of the parties and perusal of the record and report of the IO, considering the nature of allegations against the applicant/accused, the factum that the present applicant/ accused was on bail in other cases bearing FIR no.691/2021, PS Tilak Nagar and while on bail he committed the present offence and therefore, possibility of repeating the similar offence by the applicant/ accused can not be ruled out and therefore, without making any comment upon the merit of the case, this Court is of the opinion that no ground for bail is made out at this stage. Hence, the **bail application is dismissed being without any merit.**

10. Nothing discussed here-in-above shall tantamount to be an expression of opinion on the merits of the case. Application is disposed off accordingly.

A copy of order be sent to the concerned Jail Superintendent for intimation and due compliance.

Copy of the order be given dasti to the parties including the I.O.

The main case file be put up on the date already fixed i.e.
09.11.2022.

(Devendra Kumar Sharma)
ASJ/Special Judge (NDPS)
West District, THC
Delhi/01.10.2022