

CNR No. DLWT01-006306-2022
SC No.433/22
FIR No.428/22
P.S.Tilak Nagar
State Vs Ismael
u/s 21 of NDPS Act & 14 of Foreigners Act

12.07.2023

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

Present: Mr. Kamal Akhtar, Ld. Addl. PP for the State.
Ms. Mamta Wadhwa, Ld Counsel for applicant/
accused

Application seen. Ld. defence counsel and Ld. Addl. PP have made detailed oral submissions on the bail application of accused on behalf of their respective parties. I considered the rival submissions of both parties and also perused relevant records of the case.

Ld. defence counsel for applicant submits that the applicant/ accused in JC since 07.05.2022 and he is an African national. She has further submitted that the applicant has been falsely implicated in the present case and nothing incriminating has been recovered from his possession. It is further submitted that the chargesheet has already been filed and further custodial interrogation is not required. She has further submitted that the alleged recovery of 54.80 Grams of Heroin falls under intermediate quantity and there is no bar u/s 37 NDPS Act. She has further submitted that the applicant/ accused was arrested on the basis of disclosure statement of co-accused which is not admissible in law. She has further submitted that no independent

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public witness was joined at the time of alleged recovery. She has mentioned that the applicant is the sole bread winner of his family and he has no criminal antecedent. 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) *Tofan Singh vs State of Tamil Naidu*
2020 SCC online SC 882
- ii) *State of Punjab vs Baldev Singh* (1999) 6 SCC 172
- iii) *Arif Khan @ Agha Khan vs State of Uttrakhand*
(2018) 18 SCC 380.
- iv) *Vijaysinh Chandubha Jadeja V/s State of Gujarat*
AIR SC 77
- v) *Order dated 18.11.2022 passed by Hon'ble Delhi High Court in*
Bail Application No.1231/22 titled Emeka Emmanuel VS State

On the other hand, the present bail application is opposed on behalf of State submitting that applicant was caught red handed and 54.80 Grams of Heroin was recovered from his conscious possession and he being an African national was found in India without any valid document. 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.

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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 and they 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 spot. HC Ramesh Chand and Ct Sunil apprehended that 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 Grams of Heroin and during interrogation he disclosed his name as Ismael r/o Ivory cost.

In view of the aforesaid discussion, considering the nature of allegations against the applicant/accused, period of custody as well as the fact that the bar u/s 37 of NDPS Act does not attract in this case and chargesheet has already been filed and conclusion of trial will take a considerable period of time, this court hereby allows the present bail application of accused. Accordingly, the applicant/accused is admitted to bail in this case subject to following conditions : -

1. The applicant/accused shall furnish personal bond in sum of ₹50,000/- with one local surety of the like amount;
2. He is directed to appear before the court on each and every date of hearing and not change his address without prior information to the court.
4. The applicant shall not leave the country and surrender his passport, if any, along with bail bond;

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5. The applicant shall not indulge in any criminal activity in future;
6. The applicant shall not communicate with or come into contact with any of the prosecution witnesses or tamper with the evidence in any manner.

Nothing discussed hereinabove 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.

Put up on the date already fixed i.e. 01.08.2023.

(RAKESH KUMAR RAMPURI)
ASJ/ SPECIAL JUDGE: (NDPS)
(WEST)DELHI/ 12.07.2023.