

SC No. 675/2017
FIR No. 75/2017
PS. Crime Branch, Delhi
U/s 21/29 of NDPS Act & Sec. 14 of
Foreigners Act.
State Vs. Brajesh Kumar Garg & Ors.

31.08.2018 (01.05 pm)

Present: Sh. K.D. Pachauri, Ld. Addl. P.P. for State.

Accused Sandeep already PO as per record.

Accused Brajesh Kumar Garg, reportedly on bail in this matter, not present by this time.

Accused Ejime David produced from JC at this time.

Mr. Baldev Singh, Ld. Counsel for accused Brajesh Kumar Garg was present at first call given at about 11.05 a.m.

Ms. Shilpa Dua, Ld. Counsel for accused Ejime David at this time.

In the morning, at about 11.05 a.m of the Court time, Ld. Counsel for accused Brajesh Kumar Garg had submitted that there is a pending application filed on behalf of this accused dated 29.05.2018 seeking issuance of production warrants against this accused on the ground that he is in JC in some other case in Punjab at present of which details mentioned in this application. I have heard both sides on this application and perused the judicial file for this purpose.

No prima facie proof filed with this application or even today, on behalf of this accused, in order to prima facie satisfy this Court that this accused is still in JC as on date in some other case in a particular jail of Punjab warranting issuing of production warrants against him. For these reasons, this application seems to be incomplete in material particulars and dismissed as such. However, the Ld. Counsel for this accused can file such application in future, if so desired, after obtaining complete particulars of this accused, qua his being in JC in some other case in Punjab at this stage. In the considered opinion of this Court, as on date, absence of this accused appears to be intentional and malafide in this

matter before this Court. Accordingly, issue NBWs against him and notice to his surety u/s 446 Cr.P.C for 18.10.2018 to be served personally through SHO concerned of PS Crime Branch, Delhi.

At this stage, it is pointed out by Ld. Counsel, Ms. Shilpa Dua, on behalf of accused accused Ejime David, that there is a pending application filed on behalf of this accused before this Court on 28.07.2018 seeking direction to Superintendent of Jail concerned to produce this accused in custody before Nigerian Embassy, New Delhi, for the purpose of his biometric attendance for obtaining his new passport from Nigerian Embassy, New Delhi. A letter dated 24.07.2018, issued by High Commissioner, Nigerian Embassy, New Delhi, also attached in support of this application in which it has been mentioned that Nigerian Embassy, New Delhi, was in receipt of letter dated 16.07.2016 regarding Mr. Pau Ojemudia for his new passport for the purpose of which his presence was required on any Tuesday or Thursday(reserved for such purpose) for the purpose of his biometric attendance for issuance of his new passport.

Heard and perused the file for this purpose.

In the chargesheet filed before this Court in this matter, the name of this accused has been mentioned as Ejime David of Nigerian Nationality and he is also booked prima facie for committing offence u/s 14 of Foreigners Act on the ground that during investigation, this accused did not give correct information qua his passport and Visa and that in the copies of passport and Visa respectively received from his side, attached with the chargesheet, his name has been mentioned as Alex and expiry date of such passport has been mentioned as 27.05.2024 whereas alleged tourist Visa in the name of Alex has reportedly expired on 14.09.2017 and due to these discrepancies/ambiguities qua his real name/correct particulars, this accused has prima facie been also booked for the offence punishable under section 14 of Foreigners Act. This accused prima facie involved in a serious case punishable under Sec. 21/29 of NDPS Act, for prima facie possessing commercial quantity of contraband i.e. Heroin to the extent of

160 grams and this offence is punishable upto 20 years of imprisonment as well as upto fine to the extent of Rs. 2 lacs, which, in peculiar/particular circumstances, may be imposed even beyond Rs. 2 lacs. Admittedly, this accused was not having valid passport and Visa at the time of his arrest. There are serious uncertainties/ambiguities qua his actual name and address as well as qua his native place. In the further considered opinion of this Court, in this application, it is not clearly mentioned as to what purpose would be solved, qua this accused, by way of filing of this application at this stage for the purpose of obtaining his passport/Visa where even prosecution evidence(PE) not yet concluded in this matter and it is still at initial stage. Further, in the considered view of this Court, this accused can be deported, out of India, as per law/rules, through FRRO office, New Delhi, after he becomes free from this case in future as per law, after his acquittal/conviction, as the case may be, at the State expenses, and for this reason also, there is no need on the part of this accused for making efforts at his own level at this stage, for having any valid passport and visa in his favour at this stage. In the further considered opinion of this Court, he would be at liberty to obtain the same, as per law, at his native place/country, if so desired by him and if so advised, after he becomes free from this case in future as per law, after his acquittal/conviction, as the case may be. Further, in the given facts and circumstances of this case at this stage, there is possibility of misuse/illegal use of passport/visa, of this accused, if obtained by him at this stage at his own efforts. In the further considered view of this Court, based on material on record, the person namely Mr. Pau Ojemudia, who reportedly applied for new passport with Nigerian Embassy, New Delhi, on 16.07.2016, as per letter of Nigerian Embassy, New Delhi, dated 24.07.2018, mentioned above, prima facie appears to be a different person, other than accused herein i.e., Ejime David, and that other person at liberty to appear before Nigerian Embassy, New Delhi, for seeking his new passport, as per his convenience, at his own efforts

and responsibility, if so advised and if so desired by him. For these reasons, this application appears to be devoid of any merits at this stage and it appears to have been filed just to consume valuable time of this Court in deciding this meritless type of application at this stage. Consequently, this application is dismissed with cost of Rs. 4,000/-(four thousand) to be deposited, by and on behalf of this accused, with DLSA, West District, Tis Hazari Courts, Delhi, within 15 days from today, and receipt of the same to be submitted before this Court on next date i.e., 18.10.2018. As already mentioned, this cost has been imposed upon this accused, qua this application, as, in the considered view of this Court, it has resulted into wastage of valuable time of this Court in deciding this meritless type of application at this stage. It is also made clear that if this cost is not paid by and on behalf of accused, as directed above, the same may be got recovered from this accused as per law and it is also made clear that if this cost is not paid, within time given, no further application on behalf of this accused would be entertained in this matter by this Court. Hence, this application decided in view of this order.

With this order, now to come up on due date i.e., 18.10.2018 for the purpose fixed as well as for further proceedings as per law.

(Dr. SHAHABUDDIN)
ASJ/Special Judge (NDPS)
(West) Delhi/31.08.2018