



In The Court of Judge Special Court NDPS Act, Nagpur.

Presided over by
Shri. P. M. Nagalkar.

I. A. No.3 of 2024.

Special Case No.97 of 2024.

CNR No: MHNG010019722024.

Case No.DRI/MZU/NRU/INT-104/ENQ-34/2023.

State of Maharashtra.
(Through intelligence Officer, Directorate of Revenue
Intelligence, Nagpur.)

V/s

Deepan Dhuiman and ors.

Applicant/Accused No.2 : Sunday Udogadi Ihekaigbo.

Order Below Exh.10.

(Date: 22nd October 2024.)

1. This is an application for issuance of directions as applicant/accused Sunday Udogadi Ihekaigbo (Nigerian), be released on bail, U/Section 439 of the Code of Criminal Procedure. Applicant/accused booked in Case No.DRI/MZU/NRU/INT-104/ENQ-34/2023 for the offences punishable U/Sections 8(c), 21, 22, 23, 28 and 29 of the NDPS Act.
2. Perused the application along with documents annexed here with and say/report of Investigating Officer/APP. Heard both the sides at length.

3. In the light of this facts emerged, submissions by the parties and material on the record, the following points arise for determination before this Court. The said points and the findings thereon which follow the reasons as:

Point For Determination.

Sr. No.	Point	Finding
1.	Whether the applicant/accused Sunday Udogadi Ihekaigbo (Nigerian), made out the case as to issuance of direction as to be released on bail, in the given set of facts?	...No.
2.	What order?	...Application Rejected as per final order.

REASONS

As to the point no.1:

4. It appears that complaint lodged by Intelligence Officer, Directorate of Revenue Intelligence, Nagpur. Brief facts as appears that the applicant along with other accused Deepak booked in the present crime. That the applicant was arrested on 20/08/2023 was travelling and carrying with NDPS substance. Immediately this information was reported to Superior Officer. As it is further submitted that applicant Deepak was passenger on aboard Flight No.G9-415 Arabia arrived and after clearance proceeded for custom clearance on suspicion drug was found. Hence, informed to the DRI Officer. The applicant was intercepted and inquired. After following due procedure search was made. However, nothing was found incriminating in nature from his baggage. However, in the bag one rectangular black colour box found. It was notice that some parts of machines.
5. After removing said transparent tape upon opening one black colour

cylindrical roller was found and which was welded that small gear to pretend as machine parts. It was tried to open, but it could not get open, therefore, with help of hammer and small chisel opened and it was found that two poly bags one was of white colour and second was black colour. Both poly bags were filled with lumps and powder. The same was seized. It was found 3070 grams in gross with two poly bags and it was found drug detention kit presence of Amphetamines Substance type found. As such the applicant was arrested after following due procedure and further investigation he had been booked. Further, it appears that after investigation role of other accused revealed. It is revealed that after the investigation the said is said contraband as is opium delative means Diacetylmorphin i.e. the Alkaloid known as Dia-morphin or Heroin and it salts which is the prohibited and is a commercial quantity.

6. On behalf of the applicant it is argued that the applicant was totally unaware and seizure was not made and is not admissible as statement made by the accused under Section 25 and 26 of the Indian Evidence Act. He is in jail since his arrest and there is absolutely no case that he was found in conscious possession of the said contraband.
7. It is vehemently argued that there is no absolutely case as to show that this applicant is having nexus with the present crime. It is further submitted that merely he is Nigerian citizen and his phone number was revealed with other person who had not been arrested or examined. Therefore, mere suspicion as he is conspirator. It is further submitted that application is doing the business in India and residing at Mumbai Dombivali. Therefore, there is absolutely no case as against him.

8. On the other hand the application strongly opposed by the DRI that the alleged contraband was found is in commercial quantity and also it is trafficking of drugs from one Country to another. Therefore, Section 23 and 24 of the NDPS Act is applicable. It is further submitted that this applicant illegally staying in India. He had manipulated the passport and therefore, he is released on bail will not be available for the trial. It is also submitted that there is ample material on record as to show his involvement and considering the facts on record the alleged quantity of contraband it is not fit case to grant the bail.
9. Learned Advocate for the applicant relied upon the Judgments in the case of *Shakil Ahmed Peer Mohd. Shaikh..vs..The Union of Indian and Anr, Criminal Bail Application No.2104 of 2023*.
10. Further relied upon the Judgment in case of *Subhash S/o Tukaram Pandule and another..vs...The State of Maharashtra, Criminal Application (BA) No.1130 of 2023*.
11. Further relied upon the Judgment in case of Hon'ble Delhi High Court, *Starkl Ferdinan..vs...State (Customs), Bail Application NO.482 of 2005, Decided on 24/04/2005*.
12. On going through the above citation as the *Shakil Ahemad* case is concerned wherein conscious possession of the contraband and the nexus of the accused on the basis of the statement of co-accused as not admissible in law as per ratio of *Tofan Singh* was considered. Further, in case of *Subhash Pandule..vs..State of Maharashtra* wherein the similar observation was made.
13. However, the case in hand the statement of the applicant the record chats also collected and it is clear that the applicant is Nigerian

citizen. No doubt he is staying and doing some business in India and it also revealed that he had in contact with the prime accused Deepak. The person by name Chineduagu called him and to give \$ 300. It also appears that there are the several calls and the nexus of the applicant before the investigation agencies.

14. Since, the case is not only just based on the statement of the co-accused but there is independent evidence against the applicant. As such, with great respect the observation of Hon'ble Lordship in above referred cases for grant of bail are not beneficial to the applicant in the given set of facts.
15. Further, as relied upon the observations in *Starkl Ferdinan case* in which it is observed that merely ground that accused will leave the country without any base cannot be the ground if he entitled for the bail on the merit as being the accused is foreign citizen.
16. Since, the case in hand and considering the facts on the case the evidence and materiel in record and as discussed above there is ample material against the applicant and as to show the involvement and the nexus in the present crime. Hence, with great respect to their Lordship said observation is not beneficial to the applicant.
17. Since, it is commercial quantity and rigor of Section 37 of the NDPS Act is also applicable. Nothing investigation remains itself is not ground for grant of bail. As Section 37 of the NDPS Act provides the applicant has to show he was in conscious possession and there is no reasonable ground as he had been guilty for offence as mentioned. In this backdrop it is not fit case to exercise the discretion of bail. Hence, the finding of point no.1 is recorded as '**Negative**'. Consequently, proceed to pass following order.

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ORDER

1. Application is rejected.

Dictated and pronounced in open Court.

Date : 22nd October 2024.

(Pramod M. Nagalkar)
Judge Special Court NDPS Act, Nagpur.