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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ BAIL APPLN. 981/2023

UGO GEOFFERY FRANKLIN

..... Petitioner

Through: Mr. Anoop Kumar Gupta, Mr. Rohan
Gupta and Ms. Aanchal, Advs.

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr. Amol Sinha, ASC with Mr.
Kshitiz Garg, Mr. Ashvini Kumar &
Adv. Chavi Lazarus, Advs. & SI
Deepak Joshi, Special Cell/NR/STF

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Date of Decision: 31.07.2023.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

BAIL APPLN. 981/2023

1. The present bail application has been filed under Section 439 Cr.P.C. read with Section 37 NDPS Act for the grant of regular bail in a case titled as *State vs. Harjinder Singh & Ors.* SC NO. 8689/2016. FIR NO. 63/2015; P.S: Special Cell, New Delhi.
2. Briefly Stating, that on receipt of secret information on 18.11.2015, a trap was laid at Burari crossing, Outer Ring Road where accused Mangal was seen handing over a packet alleged to be containing 1 Kg



white colour heroin to Harjinder Singh and both were apprehended on the spot. It has further been alleged that 1 Kg white heroin was also recovered from the possession of Harjinder and another 1 Kg brown heroin was recovered from the Scooty of accused Mangal on the spot. During the investigation accused Mangal made a disclosure statement that he is in the trade of drug supply along with Mohd. Akhtar @ Raja, who used to get a huge supply of heroin from Sehjad. Allegedly 2 kg opium and 1 kg alprazolam were also recovered from the residence of accused Mangal.

3. The case of the prosecution is that at the instance of accused Shabir Ahmed Bhat@Sehjah the present applicant /accused Ugo Geoffry Franklin was arrested on 01.12.2015, and 1kg of heroin was alleged to be recovered from his possession and another accused Shabir Ahmed Bhat was also arrested.
4. It has further been alleged that accused Mohd. Akhtar was also arrested on 25.11.2015 and 525 gms of heroin was recovered from his newly purchased flat in New Chauhan Bangar, Seelampur, Delhi.
5. It is further alleged that applicant/co-accused Ugo Geoffery Franklin disclosed that he used to get the supply of heroin from one Imamudin, an Afghan national who was introduced to him by his Nigerian friend who is presently in Nigeria and they used to supply the heroin to Shahbir Ahmed Bhat @ Sehjad since many months. After the completion of the investigation in case FIR No. 63/2015, charge-sheet



was filed under Sections 419/468/471/474/489 Cr.P.C. and Sections 18/21/22/25/29/61/85 NDPS Act and Section 14 of Foreigners Act.

6. Learned counsel for the applicant submits that the accused Ugo Geoffery Franklin is in custody since 19.11.2015. Learned counsel for the applicant also submits that earlier also a bail application was moved bearing no. Bail Appl. 3243/2021 which was dismissed as withdrawn vide order dated 13.01.2023.
7. Learned counsel for the petitioner submits that the present accused has been arrested merely on the disclosure statement of co-accused. Learned counsel is heavily relying upon the judgment of the Hon'ble Supreme Court in the *Supreme Court legal aid committee representing Undertrial Prisoners V. Union of India &Ors. (1994) 6 SCC 731*.
8. Learned counsel for the applicant further submits that co-accused Durgesh has already been granted bail by this court vide order dated 24.05.2023.
9. Learned ASC has opposed the bail application and has submitted that there is a huge recovery from the present petitioner. Learned APP submits that evidence that has appeared against Ugo Geoffery Franklin is as under:

i. Statements of recovery witnesses regarding handing over of 01kg heroin by Ezech to Ugo Geoffery Franklin to deliver the same to Shabir Ahmed Bhat at spot and recovery of 01 kg heroin from Ugo Geoffery Franklin on 01/12/2015.

ii. Disclosure statements of accused persons and in pursuant of those disclosure further recoveries and



arrests were effected accordingly including Ugo Geoffery Franklin.

iii. Mobile CD Connectivity of accused Ugo Geoffery Franklin through his mobile numbers 9958236943 and 7838943486 with accused Shabir Ahmed Bhat upon his mobile number 9555631912

iv. Statement of PW to prove impersonation, forgery etc

v. FSL Report regarding herein

vi. Report of voice exhibits which will prove voice of accused with his voice in intercepted calls. As per FSL report voice of accused Ugo Geoffery Franklin has been matched with intercepted calls.

vii. Intercepted calls of accused Ugo Geoffery Franklin with accused Shabir Ahmed Bhat on mobile no 9555631912 (remained on interception and used by Shabir Ahmed Bhat) regarding drug trafficking activities.

16. Learned ASC submits that there is sufficient evidence against the applicant and the accused, being a foreign national, if released on bail may not be available for facing the trial.
17. It is pertinent to mention here that the accused is in custody since 19.11.2015 and thus, admittedly has undergone custody for approximately 7 Years.
18. The Hon'ble Supreme Court in *Supreme Court legal aid committee representing Undertrial Prisoners V. Union of India &Ors. (1994) 6 SCC 731* are detailed as under:
 - i. Where the undertrial is accused of an offence(s) under the Act prescribing a punishment of imprisonment of five years or less and fine, such an undertrial shall be released*



on bail if he has been in jail for a period which is not less than half the punishment provided for the offence with which he is charged and where he is charged with more than one offence, the offence providing the highest punishment. If the offence with which he is charged prescribes the maximum fine, the bail amount shall be 50% of the said amount with two sureties for the like amount. If the maximum fine is not prescribed bail shall be to the satisfaction of the Special Judge concerned with two sureties for the like amount.

- ii. Where the undertrial accused is charged with an offence(s) under the Act providing for punishment exceeding five years and fine, such an undertrial shall be released on bail on the term set out in (i) above provided that his bail amount shall in no case be less than Rs 50,000 with two sureties for like amount.*
- iii. Where the undertrial accused is charged with an offence(s) under the Act punishable with a minimum imprisonment of ten years and a minimum fine of Rupees one lakh, such an undertrial shall be released on bail if he has been in jail for not less than five years provided he furnishes bail in the sum of Rupees one lakh with two sureties for like amount.*
- iv. Where an undertrial accused is charged for the commission of an offence punishable under Sections 31 and 31-A of the Act, such an undertrial shall not be entitled to be released on bail by virtue of this order.....”, The directives in clauses (i), (ii) and (iii) above shall be subject to the following general conditions:*

(i) The undertrial accused entitled to be released on bail shall deposit his passport with the learned Judge of the Special Court concerned and if he does not hold a passport, he shall file an affidavit to that effect in the form that may be prescribed by the learned Special Judge. In the matter



case the learned Special Judge will, if he has reason to doubt the accuracy of the statement, write to the Passport Officer concerned to verify the statement and the Passport Officer shall verify his record and send a reply within three weeks. If he fails to reply within the said time, the learned Special Judge will be entitled to act on the statement of the undertrial accused;

(ii) the undertrial accused shall on being released on bail present himself at the police station which has prosecuted him at least once in a month in the case of those covered under clause (i), once in a fortnight in the case of those covered under clause (ii) and once in a week in the case of those covered by clause (iii), unless leave of absence is obtained in advance from the Special Judge concerned;

(iii) the benefit of the direction in clauses (ii) and (iii) shall not be available to those accused persons who are, in the opinion of the learned Special Judge, for reasons to be stated in writing, likely to tamper with evidence or influence the prosecution witnesses;

(iv) in the case of undertrial accused who are foreigners, the Special Judge shall, besides impounding their passports, insist on a certificate of assurance from the Embassy/High Commission of the country to which the foreigner-accused belongs, that the accused shall not leave the country and shall appear before the Special Court as and when required;

(v) the Special Judge will be at liberty to cancel bail if of the above conditions are violated or a case for cancellation of bail is otherwise made out; and

(vi) after the release of the undertrial accused pursuant to this order, the cases of those undertrials who have not been released and are in jail will be accorded priority and



the Special Court will proceed with them as provided in section 309 of the code.”

(vii) the undertrial accused shall not leave the area in relation to which the Special Court is constituted except with the permission of the learned Special Judge;

(viii) the undertrial accused may furnish bail by depositing cash equal to the bail amount;

19. It is pertinent to mention here that this court has granted bail in a catena of similar cases. Reliance can be placed upon bail application no. 1724/2021 titled Anil Kumar@Nillu Vs State and Gurmito vs. CBI bail application no. 1621/2022 dated 20.07.2022.
20. In the case of foreign nationals also the coordinate bench of this court in Ejike Jonas Orji vs NCB in bail application no. 997/2022 vide a detailed order dated 13.06.2022 has granted the bail.
21. It is relevant to note that the applicant was arrested on 01.12.2015 and has been in judicial custody and has been facing trial for the offence punishable under Sections 419/468/471/474/489 Cr.P.C. and Sections 18/21/22/25/29/61/85 NDPS Act and Section 14 of Foreigners Act.
22. It is also pertinent to mention here that the punishment prescribed under this provision is Rigorous Imprisonment for a term which shall not be less than 10 years but may extend to 20 years along with the fine under NDPS Act.
23. It is also relevant to mention here that the Hon'ble Apex Court in Satyender Kumar Antil also *inter alia* held as under:



“ 86. Now we shall come to category (C). We do not wish to deal With individual enactments as each special Act has got an objective behind it, followed by the rigor imposed. The general principle governing delay would apply to these categories also. To make it clear, the provision contained in Section 436A of the Code would apply to the Special Acts also in the absence of any specific provision. For example, the rigor as provided under Section 37 of the NDPS Act would not come in the way in such a case as we are dealing with the liberty of a person. We do feel that more the rigor, the quicker the adjudication ought to be. After all, in these types of cases number of witnesses would be very less and there may not be any justification for prolonging the trial. Perhaps there is a need to comply with the directions of this Court to expedite the process and also a stricter compliance of section 309 of the code”

24. Therefore, it is directed that the applicant is admitted to bail subject to the following conditions:
- i. That the applicant shall furnish a personal bond of the sum of Rs. 1 Lakh with two sureties of the like amount to the satisfaction of the Special Court/Duty Magistrate.*
 - ii. The applicant is directed to deposit his passport to the Special Court.*
 - iii. A certificate of assurance stating that the accused will not leave the country until the conclusion of the trial and that he will appear on every date before the Special Court unless explicitly exempted, will be sought from the High Commission of Nigeria, New Delhi. In the absence of such a certificate, the applicant will not be released on bail.*
 - iv. At 11:00 am, every Monday; the applicant shall present himself to the NCB office and shall be released upon completion of formalities within 1 hour.*



- v. *The applicant's residence will remain the same as that which is verified by the IO and is mentioned on the charge sheet. If the same changes, the applicant is required to give prior intimation of the same to the IO and Special Court.*
 - vi. *The applicant is required to provide his mobile number to the IO and to always keep the same operational.*
 - vii. *There will be no direct or indirect tampering of the evidence by the applicant.*
 - viii. *There will be no contact attempted by the applicant with the prosecution witnesses; nor will be acting in a manner prejudicial to the trial.*
 - ix. *If any offence is registered against the applicant whilst he is on bail; the NCB may apply for cancellation of the applicant's bail to the Special Court.*
 - x. *In case of any violation of the conditions, the special court may cancel the applicant's bail.*
 - xi. *The observations made in this order are for the purpose of the present bail application and does not prejudice the parties at trial.*
25. Learned Trial Court may also impose any other condition as required in the *Supreme Court legal aid committee representing Undertrial Prisoners V. Union of India &Ors. (1994) 6 SCC 731 (Supra)*
26. The application stands disposed of with the aforementioned directions.
27. A copy of this order is directed to be electronically communicated to the concerned Jail Superintendent.



JULY 31, 2023/AR

DINESH KUMAR SHARMA, J