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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 4187/2020**

FRANK VITUS

..... Petitioner

Through: Mr.Ajay Verma, Advocate (through
VC)

versus

NARCOTICS CONTROL BUREAU

..... Respondent

Through: Mr.Subhash Bansal, Senior Standing
Counsel with Mr.Raghav Bansal,
Advocate for NCB

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **18.08.2022**

CrI.M.A. No.13254/2022

The Bail Appln. No.4187/2020 filed by the applicant herein Frank Vitus in SC No. 9148/2016 was disposed of vide order dated 31.5.2022 and in view of the factum that the applicant had been incarcerated since 21.5.2014 and the verdict of the Hon'ble Supreme Court in *Supreme Court Legal Aid Committee Representing Undertrial Prisoners V. Union of India & Ors.*; (1994) 6 SCC 731, and the verdict of the Hon'ble Supreme Court in *Tofan Singh V. State of Tamil Nadu* (2021) 4 SCC 1 a verdict dated 29.10.2020 in as much as the applicant fell within the ambit of the direction (iii) in paragraph 15 of the verdict of the Hon'ble Supreme Court in *Supreme Court Legal Aid Committee Representing Undertrial Prisoners V. Union of India & Ors* (supra) and in view of the verdict of the Co-ordinate Bench of this Court in *Anil Kumar @ Nillu Vs. State*; a verdict



dated 21.03.2022 and the Hon'ble High Court of Calcutta In ***Re; Sanawar Ali*** a verdict dated 27.11.2020 reported in (2021) CrLJ 403 and the verdict of the Hon'ble Supreme Court in ***Thana Singh V Central Bureau of Narcotics*** (2013) 2 SCC 603, the applicant observing to the effect that directions in paragraph 15(iii) of the verdict of the Hon'ble Supreme Court in ***Supreme Court Legal Aid Committee Representing Undertrial Prisoners V. Union of India & Ors.*** (supra) in relation to aspect of the directions qua release of undertrial prisoners falling in the category of undertrial prisoners who are charged with the offences punishable under the NDPS Act, 1985, with a minimum imprisonment of 10 years and a minimum fine of Rupees one lakh,- are entitled to be released on bail where they have been in jail for atleast 5 years, subject to terms and conditions as laid down by the Hon'ble Supreme Court, the applicant herein along with the co-accused Ebera Nwanaforo (the applicant of Bail Appln. No. 3705/2020) was allowed to be released on bail on his filing a bail bond in the sum of Rs.1,00,000/- (Rupees One Lakh) with two sureties of the like amount to the satisfaction of the learned Special Judge, NDPS, Delhi concerned, where the trial is in progress with directions to the effect:

- *their passports be impounded and they submit their respective undertakings to the effect that they shall not leave the country;*
- *the learned Special Judge, NDPS seized of the trial in SC No.27/14 shall ensure that the certificate of assurance from the High Commission of Nigeria is placed on record that the applicants/accused shall not leave the country and shall appear before the learned Special Judge as and when required, in as much as, the complaint filed by the Narcotics Control Bureau under Sections 8/22/23/29 of the NDPS Act, 1985 indicates that the applicants are residents of Nigeria;*



- *they shall appear before the Narcotics Control Bureau Office, New Delhi during the period that they have been released on bail once a week on each Monday at 4:00 PM in terms of directive (ii) in paragraph 15 of the verdict of the Hon'ble Supreme Court in **Supreme Court Legal Aid Committee Representing Undertrial Prisoners** (supra), which reads to the effect:-
(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;***
- *in terms of the directive in paragraph 15(iv) of the verdict of the Hon'ble Supreme Court in **Supreme Court Legal Aid Committee Representing Undertrial Prisoners** (supra) they shall not leave the country;*
- *they shall not leave the city of Delhi/New Delhi;*
- *they shall appear before the Court of the learned Special Judge, NDPS as and when required and shall not leave the city of Delhi;*
- *they shall keep their mobile phones on at all times;*
- *they shall drop a PIN on the google map to ensure that their location is available to the Investigation Officer of the case;*
- *coupled with the directive that the applicants during the period that they are on bail, shall commit no offence whatsoever,*
- *in the event of there being any FIR/ DD Entry/ Complaint lodged against them, the Narcotics Control Bureau would be entitled to seek the cancellation of bail of the applicants.”*

Vide the order dated 31.5.2022 it has been specifically observed vide para 59 thereof to the effect:



“59. Furthermore, the verdict of the Hon’ble Supreme Court in Supreme Court Legal Aid Committee Representing Undertrial Prisoners (supra) vide direction Clause (iv) specifically speaks of the grant of the directives in Clauses (i), (ii), (iii) of paragraph 15 vide Clause (iv) to under trial accused persons who are foreigners, wherein, it has been stipulated that in the case of under trial 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 said accused shall not leave the country and shall appear before the Special Court as and when required. The said observations and directive Clause (iv) in paragraph 15 of the verdict of the Hon’ble Supreme Court in Supreme Court Legal Aid Committee Representing Undertrial Prisoners (supra) itself makes it apparent that accused persons falling within the ambit of Clause (iii) of the verdict in paragraph 15 of the Hon’ble Supreme Court in Supreme Court Legal Aid Committee Representing Undertrial Prisoners (supra) where they are charged with offences under the Act i.e. the NDPS Act, 1985 punishable with minimum imprisonment of 10 years and with a minimum fine of Rupees one lakh,- cannot be declined the grant of bail merely on the premise that they are foreigners and thus, the submission made on behalf of the Narcotics Control Bureau that because the applicants are foreign nationals, they cannot even be considered to be granted bail,- cannot be accepted.”,

thus observing to the effect that the prayer made by the NCB to the effect that the applicant could not be granted bail on the premise of he being a foreign national could not be accepted in as much as the conditions laid down in para 53 in the verdict ***Supreme Court Legal Aid Committee Representing Undertrial Prisoners*** (supra) the Hon’ble Supreme Court specifically dealt with the prayer made in relation to undertrial prisoners,



who are foreign nationals, and in relation to the aspect of impounding of their passports, the certificate of assurance from the Emabassy/High Commissions of the country to which the foreigner accused belongs, the contention that is sought to be raised on behalf of the NCB to the effect that in view of the applicant being a foreigner the prayer that the applicant has made orally through submissions made on 14.7.2022 for release on a cash surety cannot be accepted, in view of the factum that vide para 15(iv) of the directives and the condition (vi) to directives in paragraphs 1 to 4 in paragraph 15 of the verdict of the Hon'ble Supreme Court it has been specifically stipulated to the effect that the undertrial accused may furnish a bail by depositing cash equal to the bail amount.

It is submitted on behalf of the NCB that the prayer made vide the application presently under consideration Crl.M.A. No. 13254/2022 merely sought the modification of the order dated 31.5.2022 of this Court by reducing the number of sureties from two sureties to one surety in relation to which aspect it is essential to observe that in terms of the directives therein in *Supreme Court Legal Aid Committee Representing Undertrial Prisoners* (supra) in paragraph 15 (iii), the number of sureties that have been imposed cannot be reduced from two to one and in these circumstances it is in view of the condition (vi) to the directives therein in paragraph 15 (i) to (iv) that the prayer made by the applicant is being considered and would have to be considered.

In these circumstances, the order dated 31.5.2022 in Bail Appln. No. 4187/2020 is modified to the extent that whilst all other conditions as imposed vide order dated 31.5.2022 in paragraph 60 reproduced hereinabove remain intact, the applicant subject to compliance of all other



directions therein which includes the direction qua the submission of the certificate of assurances from the High Commission of Nigeria being placed on record that the applicant will not leave the country and the applicant would appear before the Special Judge, NDPS, as and when required, the applicant would be allowed to be released on bail on deposit of the cash amount of Rs.2,00,000/- in the Court of the Special Judge, concerned.

The Crl.M.A. No.13254/2022 is disposed of.

ANU MALHOTRA, J

AUGUST 18, 2022/SV