

**In the Court of Special Judge – NDPS Act,
Dehradun**

Present: Prashant Joshi

H.J.S.

Dated: 04-02-2015

Disposal of Bail Application No. 16/2015

- 1- Present Bail Application has been filed on behalf of accused Colette Nicole Smith in Crime No. 06/2014, NCB Dehradun u/s 9A/2SA/29 of the NDPS Act 1985.

- 2- Brief facts of the case is this that NCB (Narcotic Control Bureau) received information that on 24/2/13 officers of the **Manipur Police** seized a huge consignment of tablets containing the controlled substance pseudo-ephedrine while the traffickers were trying to smuggle the tablets across the border into **Mynamar**. It was found that the seized tablets were manufactured by **Daffohils Laboratories Pvt. Ltd Dehradun**, where present accused/applicant was allegedly appointed as one of the Directors. NCB investigated the matter and found that present accused and her other associates on behalf of **M/s Daffohils Laboratories violated provisions of NDPS Act and NDPS controlled substances regulation order 1993 (here in after referred as RCS order)** by diversion of the controlled substance i.e. **Pseudophedrine**, without maintaining the accounts etc. as desired.

- 3- Heard Learned Counsel Sh. Vivek Gupta for accused and Learned Prosecuting Officer for NCB in presence of the accused, (brought from the jail) and also perused the relevant papers.
- 4- As per the learned defence counsel accused was appointed director on 30.10.12 and her resignation was accepted on 1.12.12 and accused is not related any way with the alleged production and transaction of the controlled substances. In support some documents have been annexed with the bail application. It was further submitted that applicant neither produce control substance nor it was recovered from her and so no offence has been committed by the applicant under NDPS Act. It was added that applicant is a lady (foreign national) having no criminal history, so she is liable to be released on bail. On the other hand prosecution by submitting some papers like cheques/email have alleged that the alleged resignation of accused and its acceptance was forged as the documents clearly show that accused signed the papers as director and managed the company's affairs even before and after her accepted period in the company, as director. The prosecution agency vehemently opposed the bail application on plea of involvement of the accused in a grave offence.
- 5- The accused did not deny the fact that she was serving in the drug manufacturing company M/s Daffohills from 30-10-

..... to 1-12-12. As per prosecuting agency and it, it is prima facie shown that during the appointment of accused in the company, the controlled substance was diverted and the documents produced by the prosecution agency prima facie also reflects that the accused was actively participating in company's affairs and managing it even before and after her alleged appointment and resignation as director of this company. **As per section 38(1) of the NDPS Act, where an offence under chapter IV has been committed by a company, every person, who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.**

- 6- Every one dealing with controlled substance is required to comply with the provisions of RCS order and statutory record is required to be maintained and information is required to be sent to NCB of the concerned area. The information given or not or its genuineness is a subject matter of evidence and may be evaluated only at the time of trial. In this matter, the bail application of co-accused Rajesh Mohan Solanki has already been rejected by this court on 15.1.2015.
- 7- **Therefore keeping in view the gravity of the offence leveled against the accused, the court cannot turn blind**

eyes on misuse of the controlled substance and its menace to the society at large. In this matter, investigation is presently going on and this possibility cannot be ruled out that, if accused is released on bail, she may temper the evidence of prosecution and being foreign national, she may fled from the country.

In the light of aforesaid discussion, I do not find any ground to grant bail to the applicant/accused. Hence the bail application is rejected here by.

(Prashant Joshi)
Ist Addl. Distt. Judge Dehradun/
Spl. Judge N.D.P.S.