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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 1398/2026**
FOLLY JOHNSON

.....Petitioner

Through: Mr. J.S. Kushwaha, Advocate.

versus

CUSTOMS

.....Respondent

Through: Mr. Puneett Singhal, SPP alongwith
Mr. Jasender Singh and Ms. Yashi
Pandey, Advocates.

CORAM:
HON'BLE MR. JUSTICE MANOJ JAIN

ORDER

28.07.2026

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1. The applicant seeks grant of regular bail in case File No.VIII(AP)(10)/P&I/3687-D/ARRIVAL/2022, registered at Police Station Customs, New Delhi for commission of offences punishable under Sections 8/21/23/28 of the *Narcotic Drugs and Psychotropic Substances Act, 1985* (hereafter '*NDPS Act*'). It has been given Sessions case number as SC No.199/2023.

2. As per prosecution story, the applicant, having passport issued by Republic of Liberia arrived at IGI Airport on 28.09.2022. He came from Azerbaijan via Addis Ababa and when he was proceeding for exit gate, he was stopped after he had crossed the green channel. His bag was searched, which revealed nothing objectionable therein. After some enquiry, the applicant admitted that he had ingested some pellets/capsules containing narcotic substances. He was, thereafter, served with requisite notices under

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Section 50 of NDPS Act as well as Section 102 of Customs Act and was duly apprised about his legal rights.

3. Applicant, voluntarily, gave his willingness to undergo procedure for removal of the pellets/capsules and during the search proceedings, he eased out 14 pellets/capsules at Airport itself. These, allegedly, contained *cocaine*. Since the applicant revealed that he was having some more capsules inside his body, he consented for the medical procedure for easing out the same and was, resultantly, taken to *Safdarjung Hospital*, where he eased out 36 more capsules. Accused was, eventually, discharged from the hospital on 30.09.2022. The applicant was, thereafter, formally, arrested, pursuant to a arrest memo dated 01.10.2022.

4. The case is at the stage of trial and it is informed that seven witnesses, out of the total 25 cited witnesses, have entered into witness box.

5. It is argued that the incarceration period is of more than three and a half years and, since there is no likelihood of trial getting completed in near future and the invaluable right of having speedy trial has been seriously jeopardized, the applicant deserves to be released on bail.

6. Learned counsel for the State states that there was never any deliberate intent to delay the production of the accused before the Court and, since the applicant had conceded to the notices issued in question, and had volunteered to undergo the requisite medical procedure for easing out of the capsules, he was taken to the hospital and, therefore, the delay in production cannot be permitted to be read in favour of the applicant.

7. Learned counsel for applicant, however, strongly relies upon *Kitoko Ngiembo Alain v. Customs*,:2026 SCC OnLine Del 2294 wherein also, this Court, while keeping in mind the fact that the applicant had not been



immediately produced before the learned Court, once the capsules were eased out by him at the airport itself, granted bail to the concerned applicant while also keeping in mind the fact that the total incarceration period of such applicant was close to four years. The relevant portion of the abovesaid judgement reads as under:-

“20. Learned counsel for the applicant strongly relies upon Habib Bedru Omer v. Customs, 2025 SCC OnLine Del 4263. In said recent case, almost of similar nature, though no recovery took place at the Airport itself, the concerned accused when taken to Safdarjung Hospital, 75 capsules containing contraband were recovered from him. Further requisite action was taken after his discharge from Safdarjung Hospital and the arrest was also ‘post-discharge’ and when the abovesaid aspects were brought to knowledge of the Court, while granting bail, learned Coordinate Bench observed as under:-

27. In the present case, admittedly, the documents of the respondent shows that there was specific intelligence/prior information with regard to the arrival of the present applicant with the contraband. It is, however, the case of the respondent in the complaint filed before the learned Special Court that the applicant was intercepted on the basis of suspicion/profiling. The sequence of events and record would reflect that from the very interception, the respondent had reasons to believe that the applicant was carrying the contraband recovered. In these circumstances, it was incumbent upon the concerned Officer to comply with the provisions of the NDPS Act. Admittedly, there has been no such compliance and the respondent proceeded to detain the applicant without complying with the aforesaid procedure. The respondent was bound to comply with the aforesaid provisions from the time the applicant was intercepted at the IGI Airport. In any case, when the first set of capsules were seized by panchnama dated 21.05.2023, the respondent was bound to act in accordance with the provisions of the NDPS Act. It is pertinent to note that the report under Section 57 of the NDPS Act was sent only on 26.05.2023.

28. The applicant was in the continuous custody of the respondent from 21.05.2023 till 26.05.2023 without any authorisation. “Handing Over” and “Taking Over” memos annexed with the complaint leaves no manner of doubt that the custody of the applicant was being transferred from one Officer to the other on the basis of the rotational duties. Thus, in the opinion of this Court, such custody without any authority and without producing him before the concerned Magistrate or



Special Court within 24 hours in accordance with law is completely illegal. Even if the applicant was under medication for the procedure being carried out, the same cannot be a ground to keep him in custody. Magistrates exercising power of remand or otherwise in respect of persons in hospital is not unheard of and well recognised procedure in law.

29. Thus, the respondent without producing the applicant within 24 hours of his detention continued to keep him in Safdarjung Hospital till his final arrest on 26.05.2023. In view of the above, this Court holds that the applicant was kept in illegal custody by the respondent from 21.05.2023 to 25.05.2023. His arrest on 26.05.2023 stands vitiated. In terms of the judgment of Hon'ble Supreme Court in Subhash Sharma (supra), rights of the applicant guaranteed under Articles 21 and 22 of the Constitution of India have been violated, and therefore, he has to be released on bail despite the restrictions provided under Section 37 of the NDPS Act. The applicant has been in judicial custody since the date of his formal arrest, i.e., 26.05.2023, and has undergone incarceration for more than 2 years as of today."

21. Herein, admittedly, 19 capsules had been recovered immediately after the interception, when the applicant was taken to the toilet of IGI Airport itself. The contraband contained in 19 capsules, suspected to be cocaine, was seized, and thus offence stood revealed, then and there. In such a situation, the applicant should have been arrested immediately and produced before the Court, even if further recovery was to be affected. Thereafter, Customs, as per order of the Court, could have taken him to hospital for further easing out of capsules. In case, delay in hospitalization had any potential of resulting in health-hazard for the applicant, remand could have taken at the hospital also, by making appropriate request to the Court to come to the hospital for said purpose. Thus, applicant was, apparently, detained without any authorization, particularly when part-recovery had already taken place at Airport and offence stood revealed. Respondent cannot be absolved merely on the pretext that formal arrest was later. Thus, palpably, the applicant remained in illegal custody of Customs from the date of interception till 25.02.2022.

22. Out of 29 cited witnesses, respondent has, reportedly, examined mere 8 witnesses and the period of total incarceration of the application is close to four years. There is no thumb rule as to when period of incarceration would be labelled as 'prolonged' one. It needs to be evaluated and analyzed, on case-to-case basis.



23. *The applicant is in custody since the date of his arrest i.e. 25.02.2022 and there is no likelihood of completion of trial in near future. This Court had earlier dismissed his bail application on 02.12.2024 and by that time, four witnesses had been examined and it was ordered that trial court shall ensure that witnesses are examined expeditiously. Despite such specific directions given by this Court in Bail Application No. 2907/2024, only four witnesses have been examined in last 13 months.*

24. *When it comes to somebody's life and liberty, Article 21 of the Constitution of India must override and prevail over the statutory embargo created under Section 37 of the NDPS Act. Reference be made to Rabi Prakash v. State of Odisha: 2023 SCC OnLine SC 1009, Naeem Ahmed Alias Naim Ahmad vs. Govt. of NCT of Delhi, 2024 SCC OnLine SC 220, Mohd. Muslim v. State (NCT of Delhi), 2023 SCC OnLine SC 352, Man Mandal & Anr. vs. The State of West Bengal, 2023 SCC OnLine SC, Dheerai Kumar Shukla v. State of U.P., 2023 SCC OnLine SC 918, Badsha Sk. V. State of W.B. 2023 SCC OnLine SC 1867, Zakir Hussain v. State (Govt. Of NCT of Delhi) 2025 SCC OnLine Del 253, and Vinay Sharma v. State (NCT of Delhi): 2025 SCC OnLine Del 5137.*

8. The situation herein is also almost similar. The period of incarceration is also of more than three and a half years.

9. The rigours of Section 37 of NDPS Act and the right provided under Article 21 of the Constitution of India have to be read harmoniously and not in juxtaposition. This Court in *Arinze Hillary Ali v. State of NCT of Delhi (In Bail Appln. No.1022/2026; DoD 27.04.2026)* has observed that all the factors must be considered holistically and while, applying the test under Section 37 of NDPS Act, it is to be ensured that the constitutional guarantee enshrined under Article 21 of the Constitution is not eclipsed.

10. Keeping in view the overall facts of the case, *albeit*, without expressing any opinion over the merits of the case, the applicant is directed to be released on bail on his furnishing personal bond in a sum of Rs. 50,000/- with one



surety of like amount, subject to the satisfaction of learned Trial Court/CMM/Duty Magistrate with the following conditions: -

- (i) *The surety shall be local.*
 - (ii) *The address, where the applicant would be residing after his release, shall be revealed in advance and the learned Trial Court will be at liberty to get the same verified, before accepting the bonds.*
 - (iii) *The applicant shall report to the concerned IO, every first Sunday of the month at 10:00 AM, till validation of his passport/visa.*
 - (iv) *The applicant shall not leave the National Capital Region of Delhi, without prior permission of learned Trial Court.*
 - (v) *The applicant shall not try to contact or influence any witness, directly or indirectly.*
 - (vi) *He shall provide one Mobile Number to the concerned I.O and shall ensure that such Mobile Number remains active and operational, till the disposal of the case by the learned Trial Court.*
11. Any violation of the above conditions shall invite cancellation of bail.
 12. Needless to state, nothing observed hereinabove shall amount to final expression on the merits of the case.
 13. The application stands disposed of in aforesaid terms.
 14. Let a copy of this order be sent to the concerned Court and also to the Jail Superintendent for necessary information and compliance.

MANOJ JAIN, J

JULY 28, 2026/sw/pb