



WEB COPY



CrI.O.P.No.11396 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 10.12.2025**

CORAM

**THE HONOURABLE MR. JUSTICE K.RAJASEKAR**

**CrI.O.P.No.11396 of 2025**

Judith Twinomwebembezi

... Petitioner

Vs.

The State represented by  
The Superintendent of Customs,  
Prosecution Unit -Air,  
New Custom House, Meenambakkam,  
Chennai – 600 027.  
(R.R.No.02 of 2022)

... Respondent

**PRAYER :** Criminal Original Petition filed under Section 483 of Bharatiya  
Nagarik Suraksha Sanhita, 2023, to enlarge the Petitioner/Accused on bail in  
R.R.No.02 of 2022 pending on the file of the respondent Police.

For Petitioner : Mr.M.G.Martinmanivannan

For Respondent : Mr.Vishnu  
Special Public Prosecutor

**ORDER**

The petitioner, who was arrested and remanded to judicial custody on  
21.01.2022, for the offence punishable under Sections 8(c) read with Section  
21(c), 23(c) & 29 of NDPS Act, 1985 in R.R.No.02 of 2022, registered on the  
file of the respondent, seeks bail.



CrI.O.P.No.11396 of 2025

2. The allegation against the petitioner is that on 20.01.2022, the officers of Air Intelligence Unit (AIU) of Customs intercepted the accused, who had arrived from Sharjah by Air Arabia Flight Number G9-471 landed at Chennai International Airport on 20.01.2022 at 02.52 hrs and on suspicion that she might be carrying some contraband which is permitted for import under the provisions of Customs Act, 1962 and NDPS Act, 1985 ( as amended). The Officer after complying with the due procedure began to search the accused in the presence of independent witnesses and in the presence of said Gazatted Officer. During the search, a lavender colour cloth pouch was found kept inside her innerwear and on opening the lavender colour cloth pouch it was found to contain 108 assorted capsules totally weighing 1302 grams suspected to be Narcotic Drugs was recovered. On cut opening each capsules, pale yellowish colour crystalline powder was found concealed inside the capsules. The preliminary test answered for “Heroin”, further Mahazar witnesses and petitioner/accused has affixed their dated signatures on the e-ticket dated 17.01.2022, boarding pass and the copy of the Passenger List for having seen and perused the same. On enquiry, the petitioner/accused had informed the officers that the narcotic substances were given to her by Ms.Tanya at Entebbe ( Uganda) with an instruction to check-in the same in flight from Entebbe (Uganda) to Sharjah and from there to



Crl.O.P.No.11396 of 2025

Chennai where it was to be delivered to a person after contacting Ms.Tanya outside the Chennai Airport for monetary consideration of USD 4000/-.

Hence, the case.

3. The learned counsel appearing for the petitioner submitted that search and seizure was conducted and recovery of alleged Narcotic drug was seized from the person; hence Section 50 of NDPS Act is squarely applicable to the facts of the case. He further submitted that, respondent have not complied the condition. Though Search Officer intimated the right of being searched before the Gazetted Officer or before the Judicial Magistrate, for which the petitioner herein has exercised her option of being searched by the Gazetted Officer, however instead of independent Gazetted Officer, the search was conducted by the Search Officer himself and the contraband was seized. It is a clear violation of Section 50 of NDPS Act. He also relied on the judgement of Apex Court in Crl.A.No.4931 of 2024 reported in **State Of NCT of Delhi Vs. Mohd.Jabir**. Hence, he prayed for grant of bail to the petitioner.

4. The learned Special Public Prosecutor submitted that, Section 50 of NDPS Act was properly complied with in this case and further submitted that



Crl.O.P.No.11396 of 2025

the Officer who conducted the search and seizure has acted as Gazetted Officer in terms of Section 50 and she is also Custom Officer and hence Section 50 has been complied with and opposed to grant bail. Further, Section 37 is squarely applicable in this case and violation of Section 50 is not a ground to grant bail and other circumstances also looked into.

5. The Hon'ble Apex Court in the case of in Crl.A.No.4931 of 2024 reported in **State Of NCT of Delhi Vs. Mohd.Jabir** held often considered the question whether member of search party can be a act as as gazetted officer contemplated under Section 50 of NDPS Act and held as follows:

*Section 50 of the NDPS Act reads as under:*

*“50. Conditions under which search of persons shall be conducted.—*

*(1) When any officer duly authorized under section 42 is about to search any person under the provisions of section 41, section 42 or section 43, he “NDPS Act”, for short. 1 shall, if such person so requires, take such person without unnecessary delay to nearest Gazetted Officer of any of the departments mentioned in section 42 or to the nearest Magistrate.*

*(2) If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in sub-section (1).*

*(3) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith*



WEB COPY



CrI.O.P.No.11396 of 2025

*discharge the person but otherwise shall direct that search be made.*

*(4) No female shall be searched by anyone excepting a female.*

*(5) When an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under section 100 of the Code of Criminal Procedure,*

*(6) After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within seventy-two hours send a copy thereof to his immediate official superior.” The provision vide sub-section (1) mandates that when an officer duly authorized under Section 42 is about to search a person under the provisions of Sections 41, 42 or 43, he shall, if 2 the person about to be searched so requires, take the person without unnecessary delay to the nearest Gazetted Officer of any of the departments mentioned in Section 42 or to the nearest Magistrate. It is obvious that the intent behind the provision is to ensure that the person about to be searched is made aware of the option to be taken before a third person other than the one who is conducting the search. Use of the expression “nearest” refers to the convenience as the suspect is to be searched. Delay should be avoided, as is reflected from the use of the word “unnecessary delay” and the*



CrI.O.P.No.11396 of 2025

*exception carved in sub-section (5) to Section 50 of the NDPS Act. Nothing more is articulated and meant by the words used, or the intent behind the provision. Having said so, we are unable to appreciate the reasoning given by the High Court in the impugned judgment, which states that use of the word 'any' does not satisfy the mandate of the 'nearest' Gazetted Officer and, hence, the respondent, Mohd. Jabir, is entitled to bail. The option given to the respondent, Mohd. Jabir, about to be searched, with reference to a Gazetted Officer or a Magistrate, does not refer to the authorized person in the raiding team itself. It is pertinent to mention that the respondent, Mohd. Jabir, did not exercise the option.*

6. Admittedly, in this case, the petitioner had exercised the option of being searched in the presence of a Gazetted Officer, and the search officer claims herself as Gazatted Officer as contemplated under Section 50 of NDPS Act. As observed by the Apex Court, it is clear case of violation of Section 50 of NDPS and though substantial non-compliance is not a ground for granting bail under Section 37 of NDPS Act. In this case, there is a clear violation of Section 50 and it resulted in causing prejudice to the rights of petitioner herein. Hence, this Court is inclined to grant bail to the petitioner with certain conditions:



CrI.O.P.No.11396 of 2025

7. Accordingly, the petitioner is ordered to be released on bail on their executing a bond for a sum of **Rs.50,000/- (Rupees Fifty Thousand only)** with **two sureties**, each for a like sum to the satisfaction of the learned **I Additional Special Judge, Special Court under EC & NDPS Act** and on further conditions that:

[a] the sureties shall affix their photographs and Left Thumb Impression in the Application for Surety ship [Judicial Form No.46 annexed to 'The Criminal Rules of Practice, 2019']. The learned Magistrate shall obtain a copy of any one of the identity proofs to ensure their identity;

**[b] the petitioner shall report before the respondent police daily at 10.30.a.m., for a period of six weeks and thereafter as and when required for interrogation;**

[c] the petitioner shall make himself available for interrogation by a Police Officer as and when required;

[d] the petitioner shall not directly or indirectly cause any threat to the de facto complainant and witnesses;

[e] the petitioner to give an undertaking that if required for being identified by witnesses during investigation or for police custody beyond the first fifteen



WEB COPY



CrI.O.P.No.11396 of 2025

days, he shall comply to the directions as may be given by the Court in this regard;

[f] On breach of any of the aforementioned conditions, the learned Magistrate/Trial Court is entitled to pass appropriate orders against the petitioner in accordance with law as if the aforementioned conditions have been imposed and the petitioner released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in **P.K.Shaji vs. State of Kerala [(2005)13 SCC 283]**;

[g] If the accused thereafter absconds, a fresh FIR can be registered under Section 269 of B.N.S.

**10.12.2025**

sma

**Note :**

1. Registry is directed to forthwith upload this order in the Official Website of this Court.
2. All concerned to act on this order being uploaded in Official Website of this Court without insisting on certified hard copies. To be noted, this order when uploaded in the official website of this Court will be watermarked and will also have a QR code.



WEB COPY



CrI.O.P.No.11396 of 2025

To

1. I Additional Special Judge, Special Court under EC & NDPS Act.

2. The Superintendent of Customs,  
Prosecution Unit -Air,  
New Custom House, Meenambakkam,  
Chennai – 600 027.

3. The Central Prison for Women, Puzhal.

4. The Public Prosecutor,  
High Court of Madras.



WEB COPY



Crl.O.P.No.11396 of 2025

**K.RAJASEKAR, J.**

sma

**Crl.O.P.No.11396 of 2025**

**10.12.2025**