IN THE HIGH COURT FOR THE STATE OF TELANGANA // AT HYDERABAD

MONDAY, THE EIGHTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SMT JUSTICE K. SUJANA

CRIMINAL PETITION NO: 10800 OF 2025

Between:

Ms. Aisha Nduwimana, Female Aged about 43 years, Occupation. Pvt. Employee, D/o Hakizimana Idrissa, Resident of Kamenge 8, Bujumbura, Burundi. (Presently in Chanchalguda Jail). **...Petitioner/Accused**

AND

The Superintendent of Customs, Customs Commissionerate, GST Bhavan, Basheerbagh, Hyderabad-500004. **...Respondent/Defacto Complainant**

Petition under Section 483 of BNSS, praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to **Grant** regular bail to the petitioner/accused, Ms. Aisha Nduwimana, aged 43 years, a citizen of the Republic of Burundi, residing at Kamenge 8, Bujumbura, Burundi, in connection with S.C. No. 104 of 2023, pending on the file of the Special Sessions Judge for Trial of Cases under NDPS Act at L.B. Nagar, Rangareddy District, Hyderabad. Considering the petitioner's status as a female foreign national, the lack of prior criminal record, and the procedural lapses in the investigation, it is humbly requested that this Hon'ble Court grant bail, ensuring justice and the preservation of her constitutional rights.

This Petition coming on for hearing, upon perusing the Memorandum of Grounds of Criminal Petition and upon hearing the arguments of Mr MD FASIUDDIN, Advocate for the Petitioner and Mr DOMINIC FERNANDES, the STANDING COUNSEL on behalf of the sole Respondent

The Court made the following: ORDER

IN THE HIGH COURT FOR THE STATE OF TELANGANA

AT HYDERABAD

THE HONOURABLE SMT. JUSTICE K. SUJANA

CRIMINAL PETITION No.10800 of 2025

DATE: 08.12.2025

BETWEEN:

Ms. Aisha Nduwimana

.....petitioner/accused

And

The Superintendent of Customs,
Customs Commissionerate,
GST Bhavan, Basheerbagh,
Hyderabad, 500004.

.....Respondent/complainant

ORDER

This Criminal Petition is filed praying this Court to enlarge the petitioner on bail who is arrayed as accused in S.C. NDPS No.104 of 2023 on the file of the learned Special

Sessions Judges for Trial of Cases under NDPS Act at L.B. Nagar, Ranga Reddy District at Hyderabad, registered for the offence punishable under Sections 21, 23, 25A, 28 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act').

2. Heard Sri Mohd. Fasiuddin, learned counsel appearing on behalf of the petitioner as well as Sri Dominic Fernandes, learned Standing Counsel appearing on behalf of the respondent.

3. Learned counsel for the petitioner submitted that the petitioner is a citizen of Burundi was intercepted at Rajiv Gandhi International Airport on 02.07.2023 and allegedly found with 2027 grams of heroin concealed in her luggage, though she denied knowledge of the contraband and asserted absence of *mens rea* as required under Sections 21, 23, and 29 of the NDPS Act, 1985. He emphasized that the search and seizure were vitiated by serious procedural lapses: non-compliance with Section 50 of the NDPS Act, which mandates informing the accused of her right to be searched before a magistrate or Gazetted officer, and

violation of Section 42, which requires prior written authorization for conducting searches. In support of his submissions, he placed reliance on **State of Punjab v. Balbir Singh**[1], **K.K. Verma v. Union of India**[2], and **State of Rajasthan v. Parmanand**[3], which held that such violations render the evidence inadmissible. He argued that any statement recorded under Section 67 of the NDPS Act was inadmissible in light of the ruling of the Hon'ble Supreme Court in **Tofan Singh v. State of Tamil Nadu**[4], unless corroborated by independent evidence.

4. Learned counsel for the petitioner contended that although the seized quantity exceeded the commercial threshold under Notification S.O. 1055(E) dated 19.10.2001 (small quantity for heroin being 5 grams and commercial quantity 250 grams), the petitioner had no knowledge or intent to traffic narcotics, and her role was limited, possibly due to coercion or financial exploitation. He further contended that the petitioner had no prior criminal antecedents, had been wrongfully implicated, and was not a

[1] (1994) 3 SCC 299
[2] (1998) 9 SCC 348
[3] (2014) 5 SCC 345
[4] (2021) 4 SCC 1

habitual offender. The investigation was substantially completed, with seizure, questioning, and filing of the charge sheet already done, making her continued detention unnecessary. He further contended that there are defects in the panchanama and documentation, including lack of proper identification of witnesses, absence of independent and neutral witnesses, failure to maintain chain of custody, contradictions between the panchanama and investigation report, improper sealing and handling of narcotics, absence of videography or photographic evidence, and failure to record the petitioner's legal rights and contended that these lapses undermined the credibility of the case of the prosecution.

5. Learned counsel for the petitioner further contended that, on humanitarian grounds, the petitioner was a single mother with dependent children, and her prolonged detention in a foreign country caused undue hardship. He further submitted that the petitioner was willing to surrender her passport, report regularly to the investigating officer, and abide by any conditions imposed by the Court, thereby eliminating concerns of flight risk. Judicial

precedents were cited, including Criminal Petition Nos. 8958 of 2024 and 5362 of 2023 of the Telangana High Court, where bail was granted to foreign nationals in NDPS cases involving procedural violations and lack of direct evidence. He further submitted that Section 37 of the NDPS Act, which imposes stringent conditions for bail in cases involving commercial quantities, should not be rigidly applied in her case given the absence of intent, knowledge, or conspiracy. Therefore, he prayed the Court to grant bail to the petitioner by allowing this Criminal Petition

6. On the other hand, learned standing counsel for the respondent had submitted that the petitioner was apprehended at Rajiv Gandhi International Airport with 2027 grams of heroin concealed in her baggage, thereby committing offences under Sections 8(c), 21, 23 25A, 28 and 29 of the NDPS Act, 1985 and that her own statement dated 02.07.2023 revealed collusion with an unknown Kenyan lady and one Mr. Sanday, and that she knowingly agreed to carry narcotics for monetary consideration, thus establishing culpable mental state. He emphasized that the search and seizure were conducted strictly in compliance

with Section 50, as the petitioner was informed of her rights and the proceedings were carried out in the presence of a Gazetted Officer, a lady officer, and lady panch witnesses. He further submitted that Section 42 empowered the customs officers to conduct the search and arrest without warrant, and that the petitioner's claim of procedural lapses was unfounded. He contended that the contraband was properly inventorised under Section 52A, samples were drawn before the Magistrate, and laboratory reports confirmed the seized substance as heroin and that being a foreign national, the petitioner was a flight risk, and her release would hamper investigation and adversely affect national security and economy. He further contended that Section 37 of the NDPS Act imposed stringent conditions for bail in cases involving commercial quantity, and the petitioner failed to satisfy the twin requirements of proving that she was not guilty and that she would not commit an offence while on bail.

7. In support of his submissions, he placed reliance on a catena of binding precedents which uniformly held that bail under the NDPS Act is an exception and denial is the rule.

In **Customs v. Almadalieva Nodira**[5], **State of M.P. v. Kajad**[6], **Ram Samujh v. State of Haryana**[7], **Durand Didier v. Chief Secretary, Goa**[8], and **State of Punjab v. Baldev Singh**[9], the Supreme Court underscored the stringent bar under Section 37 and emphasized that individual liberty must yield to larger public interest in narcotics cases. Further reliance was placed on **NCB v. Mohit Aggarwal**[10], where the Court clarified that completion of investigation or filing of charge sheet is not sufficient to satisfy Section 37; **Union of India v. Rattan Malik**[11], which held that prolonged custody or delay in trial cannot override the statutory bar; **State of Meghalaya v. Lalrintlunga Sailo**[12], which rejected humanitarian grounds such as illness as a basis for bail in commercial quantity cases; **State of Kerala v. Prabhu**[13], which reiterated that Section 50 applies only to personal search and not baggage; and **NCB v. Kashif**[14], which emphasized that negation of bail is the rule and grant

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[5] (2021) 17 SCC 302
[6] (2001) 7 SCC 673
[7] (1994) 9 SCC 609
[8] (1990) 1 SCC 95
[9] (1999) 6 SCC 172
[10] (2022) 4 SCC 713
[11] (2009) 2 SCC 624
[12] (2023) 6 SCC 1
[13] (2023) 2 SCC 721
[14] (2022) 12 SCC 1

is an exception, with the twin conditions under Section 37 being cumulative and mandatory and in **Union of India v. Shiv Shanker Kesari**[15] and again in **NCB v. Mohit Aggarwal**[16], the Court held that statements under Section 67, even if retracted or alleged to be coerced, are matters for trial and cannot alone justify bail. Therefore, he submitted that in the absence of antecedents, prolonged custody, completion of investigation, or humanitarian considerations cannot entitle an accused to bail in NDPS cases involving commercial quantity unless the strict twin conditions of Section 37 are satisfied. Therefore, he prayed the Court to dismiss the Criminal Petition.

8. In the light of the submissions made by both the learned counsel and upon perusal of the material available on record, it appears that the contraband seized from the petitioner amounts to a commercial quantity of heroin. Therefore, the entitlement of the petitioner to bail has to be examined in view of the rigour of Section 37 of the NDPS Act, 1985, which mandates that before granting bail, the

[15] (2007) 7 SCC 798
[16] (2022) 4 SCC 713

Court must be satisfied that there are reasonable grounds to believe that the accused is not guilty of the alleged offence and that she is not likely to commit any offence while on bail.

9. In the present case, a huge commercial quantity of heroin weighing 2027 grams was seized from the petitioner at the airport. Though the petitioner contended that she was not in conscious possession of the said drug, her own statement recorded under Section 67 of the NDPS Act revealed that she had agreed to transport the contraband for monetary consideration offered by a Kenyan lady, and she admitted that she was carrying the bag containing heroin concealed in African dresses, soaps, and a hand bag. The learned counsel for the petitioner relied on **Tofan Singh v. State of Tamil Nadu** (cited supra) to contend that confessional statements under Section 67 are inadmissible; however, as held in subsequent judgments including **Mohit Aggarwal** (cited supra) and **Union of India v. Shiv Shanker Kesari**[17], the admissibility of such statements is a matter

[17] (2007) 7 SCC 798

for trial, and at the stage of bail, the Court cannot discard them outright.

10. It is the further contention of the learned counsel for the petitioner that the search was vitiated for non-compliance with Section 50 of the NDPS Act. However, the counter affidavit filed by the respondent demonstrated that the search and seizure were conducted in accordance with law, thereby satisfying the statutory requirements. Moreover, as clarified in **State of Kerala v. Prabhu**[18], Section 50 applies only to personal search and not to baggage carried by the accused. This position was reiterated in **Sura v. State of Gujarat**[19] and **SK Raju v. State of West Bengal**[20], holding that recovery from baggage does not attract Section 50.

11. The petitioner also urged that she had no criminal antecedents and sought bail on humanitarian grounds. However, as consistently held in **Jaseer SM v. State of**

[18] (2023) 2 SCC 721
[19] (1999) 8 SCC 469
[20] (2018) 9 SCC 708

Kerala[21], **Union of India v. Rattan Malik**, and **State of Meghalaya v. Lalrintlunga Sailo**, absence of ar ecedents, prolonged custody, or humanitarian consideratio s cannot override the statutory bar under Section 37 of N DPS Act. The Hon'ble Supreme Court in **Ram Samujh v. State of Haryana**, **State of M.P. v. Kajad**, **Customs v. Ali nadalieva Nodira**, and **NCB v. Kashif** has consistently held that negation of bail is the rule and its grant is an ex ception in NDPS cases involving commercial quantity. The expression "reasonable grounds" under Section 37 requires something more than *prima facie* satisfaction and it con templates substantial probable cause to believe that the acc sed is not guilty. In the present case, given the recovery of a huge commercial quantity of heroin from the bagga ge of the petitioner, such satisfaction cannot be recorded.

12. In view thereof, this Court is not satisfied that there are reasonable grounds to believe that the petitio ner is not guilty of the alleged offence or that she is no likely to commit any offence while on bail. The plea of nnocence, lack of antecedents, or humanitarian grounds ca not entitle

[21] (2022) 8 SCC 389

her to bail in view of the statutory bar under Section 37 of the NDPS Act.

13. Therefore, the Criminal Petition is dismissed. However, as the investigation was completed and charge sheet was filed, the trial Court is directed to expedite the proceedings and dispose of the case at the earliest, keeping in view the mandate of Section 36A of the NDPS Act.

Miscellaneous applications, if any pending, shall stand closed.

SD/-M.NAGAMANI
ASSISTANT REGISTRAR

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SECTION OFFICER

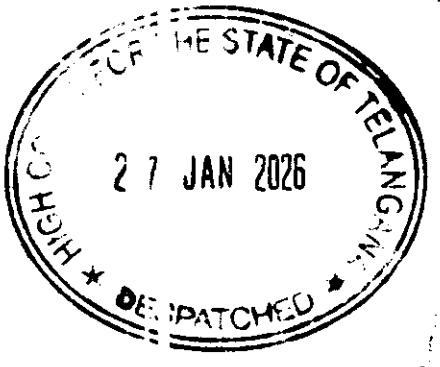
To,

1. The Special Sessions Judge for Trial of Cases under NDPS Act at L.B. Nagar, Rangareddy District
2. The Superintendent of Customs, Customs Commissionerate, GST Bhavan, Basheerbagh, Hyderabad-500004.
3. One CC to Mr. MD FASIUDDIN, Advocate [OPUC]
4. One CC to SRI. DOMINIC FERNANDES (senior standing counsel for CBIC) Advocate [OPUC]
5. Two CD Copies

RC/PSL

HIGH COURT

DATED: 08/12/2025



ORDER

CRLP.No.10800 of 2025

Accordingly, this Criminal Petition is Dismissed

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