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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **BAIL APPLN. 428/2025**

OLIVER JAMES @ OLIVER
IKECHUKWU

.....Applicant

Through: Mr. Anoop Kr. Gupta and
Mr. Rohan Gupta, Advs.

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Ritesh Kumar Bahri,
APP for the State with Ms.
Divya Yadav, Adv. with
SI Rajendra Meena, Anti-
Narcotics Squad, West
Distt., Delhi.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

O R D E R

% **06.05.2025**

1. The present application is filed seeking regular bail in FIR No. 323/2024 dated 08.06.2024 registered at police station Tilak Nagar for offence under Sections 8/ 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('**NDPS Act**'). The charge sheet has been filed in the present case under Sections 8/ 21 of the NDPS Act and 14 of the Foreigners Act, 1946.

2. Brief facts of the case are that on 08.06.2024, a raid was conducted on the basis of a secret information received and the applicant was caught with 48.14 gms. of heroin drugs at his rented premises– C-97, First floor, Old Mahabir Nagar, Tilak Nagar, Delhi, whereafter the FIR was registered. In his statement he disclosed that he had travelled to India in the month of February, 2023 on medical visa as he was suffering from a heart

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disease, and got treated at Alasia Hospital, Delhi. He stated that he had spent a lot of money on his treatment and therefore he decided to live in Delhi and earn money for which he contacted other African persons in Chander Vihar, Vikaspuri, Dwarka and Tilak Nagar, and started to sell heroin. He disclosed that he used to procure the drugs from another African person namely—Awolowo, in Vikaspuri.

3. The learned Special Judge, (NDPS), West District, Delhi (hereafter '**Trial Court**') *vide* order dated 16.11.2024 framed charges against the applicant, under Sections 21(b) of the NDPS Act and 14 of the Foreigners Act, 1946, after considering the FSL Report, statements of the witnesses and other facts and circumstances of the case.

4. The applicant's bail application was dismissed *vide* order dated 23.08.2024 on an earlier occasion. Thereafter, again on 10.12.2024, the applicant's bail application was dismissed *vide* the order passed by the learned Trial Court, while observing that the applicant had come to India without any valid documents and no fresh ground has been made out by the applicant for grant of bail, since its previous dismissal.

5. The learned counsel for the applicant that the applicant has been falsely implicated in the present case. He states that no public witnesses have been cited even though the recovery was made from the rented premises of the applicant which is situated at a highly populated area.

6. He submits that the case involves intermediate quantity of contraband and as such, rigors of Section 37 of the NDPS Act do not apply.

7. He submits that the applicant has clean antecedents and is



not previously involved in any other similar case.

8. He submits that the chargesheet has already been filed on 24.07.2024 after completion of investigation with 22 witnesses being cited by the prosecution, out of which none have been examined yet. In this regard, he submits that the trial will take a long time to conclude and therefore the applicant should be released on bail.

9. The learned Additional Public Prosecutor for the State vehemently opposes the grant of bail to the applicant. He submits that the applicant has provided a fake passport to the authorities, as per the verification report of the Ghana High Commission and is very likely to jump bail.

10. I have heard the learned counsels and perused the record.

11. It is settled law that the Court, while considering the application for grant of bail, has to keep certain factors in mind, such as, whether there is a *prima facie* case or reasonable ground to believe that the accused has committed the offence; circumstances which are peculiar to the accused; likelihood of the offence being repeated; the nature and gravity of the accusation; severity of the punishment in the event of conviction; the danger of the accused absconding or fleeing if released on bail; reasonable apprehension of the witnesses being threatened; etc. However, at the same time, the period of incarceration is also a relevant factor that is to be considered.

12. It is argued on behalf of the applicant that the bar under Section 37 of the NDPS Act would not be attracted in the present case as only intermediate quantity of the contraband has allegedly been recovered from the applicant.

13. It is not disputed that only 48.14 gms of Heroin was



recovered from the applicant *prima facie*, at this stage, the contraband recovered from the applicant cannot attract the rigours of Section 37 of the NDPS Act.

14. There is no cavil that only because the recovery of the contraband is of intermediate quantity, the accused would *ipso facto* be entitled for grant of bail. The application would still have to be considered on its own merits, *albeit* without the bar of Section 37 of the NDPS Act.

15. The learned counsel for the applicant has also raised the issue that no independent witness was joined by the prosecution even though the applicant was apprehended in a highly populated area. This Court in the case of ***Bantu v. State Govt of NCT of Delhi: 2024: DHC: 5006*** has observed that while the testimony of independent witness is sufficient to secure conviction if the same inspires confidence during the trial, however, lack of independent witnesses in certain cases can cast a doubt as to the credibility of the prosecution's case.

16. It was held that when the Investigating Agency had sufficient time to prepare before the raid was conducted, not finding the public witness and lack of photography and videography in today's time casts a doubt to the credibility of the evidence.

17. The present case is not based on a chance recovery that the Investigating Agency could contend that they did not get sufficient time to prepare. Given the crowded nature of the place of the rented accommodation of the applicant, from where the recovery was made, it is peculiar that no public witness has joined the search.

18. The object of jail is to secure the appearance of the



accused during the trial. The object is neither punitive nor preventive and the deprivation of liberty has been considered as a punishment.

19. The applicant was arrested way back on 08.06.2024, and has spent almost one year in custody. The chargesheet has already been filed, and the applicant is no longer required for custodial interrogation. It is pertinent to note that the charges are framed in the present case. It cannot be denied that the applicant has spent substantial period in custody, and the investigation is complete. It is also undisputed that the applicant has clean antecedents.

20. It is also observed that no witnesses have been examined yet out 22 witnesses as cited by the prosecution. In such circumstances, the trial is not likely to conclude in the near future. The object of jail is to secure the appearance of the accused persons during the trial. The applicant cannot be made to spend the entire period of trial in custody especially when the trial is likely to take considerable time.

21. The Hon'ble Apex Court in a catena of judgements has held that once it is obvious that a timely trial would not be possible, and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.

22. Without commenting further on the merits of the case, the applicant has made out a *prima facie* case for grant of bail. However, keeping in mind the fact that the applicant is a foreigner, appropriate conditions ought to be put to allay the apprehension of the applicant tampering with the evidence or evading the trial.



23. In view of the above, the applicant is directed to be released on bail on furnishing a personal bond for a sum of ₹20,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court, on the following conditions:

- a. The applicant will not leave the boundaries of the National Capital Region without prior permission of the Court, and will deposit his passport with the learned Trial Court;
- b. The applicant shall provide the details of his permanent address to the learned Trial Court and intimate the Court, by way of an affidavit, as well as the IO about any change in his residential address;
- c. The applicant shall, upon his release, give his mobile number to the concerned IO and shall keep his mobile phone switched on at all times;
- d. The applicant shall appear before the learned Trial Court on every date of hearing;
- e. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;

24. The State is directed to immediately communicate the present order to the concerned Registration Officer appointed under Rule 3 of the Registration of Foreigners Rules, 1992 in order to take appropriate steps in accordance with the law.

25. In the event of there being any FIR/DD entry / complaint lodged against the applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.



26. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

27. The present bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

MAY 6, 2025