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

+ **BAIL APPLN. 433/2025**

CHIDERA JACINTA OKOLIPetitioner

Through: **Mr.Aditya Aggarwal, Advocate**

versus

CUSTOMSRespondent

Through: **Mr.Satish Aggarwala, SPP**

CORAM:
HON'BLE MR. JUSTICE ARUN MONGA

ORDER

03.09.2025

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1. Petitioner is before this Court seeking regular bail in respect of File No. VIII(AP)10/P&I/4662-A/ ARRIVAL/2024 under Section 8/21/23 of the NDPS Act. Contraband seized is total of 6.14 kg cocaine.
2. Shorn of unnecessary details, case of the prosecution is that on 30.01.2024, acting on secret information, customs officials at IGI Airport intercepted passenger Chidera Jacinta Okoli (petitioner herein) arriving from Addis Ababa. On searching her baggage in the presence of witnesses and after serving a notice under Section 50 NDPS Act, officials recovered 6.14 kg of cocaine concealed in trolley bags. The substance tested positive, was duly seized, and the petitioner's statement under Section 67 NDPS Act was recorded before her arrest the same day.
3. Heard and perused the case file.
4. Learned counsel for the petitioner has advanced submissions in line with the grounds taken in the petition.



4.1 It is argued that the prosecution has failed to comply with the mandatory procedure under Section 52A(2) of the NDPS Act. The said provision requires the officer concerned to prepare an inventory of the seized contraband, make an application to the Magistrate for certifying its correctness, and to draw representative samples in the Magistrate's presence. In the present case, no such certified inventory is available on record.

4.2 Copies of the inventory, application under Section 52A, and order of the learned Magistrate are annexed as Annexures P-6 to P-8. Reliance is placed on **Mohit Bhati v. State (Bail Appln. 1853/2024, decided on 01.08.2024)**, where following the ratio in **Yusuf @ Asif v. State (Cr.A. 3191/2023, decided on 13.10.2023)**, it was held that unless the inventory and samples are duly certified by the Magistrate, the seized contraband cannot constitute valid primary evidence, and the trial would stand vitiated. Similar views have been taken in **Sanju v. State of Karnataka (08.01.2024)** and **Shihabudheen v. State of Kerala (25.04.2024)**.

4.3 It is further urged that the petitioner, being a female, was searched in breach of Section 50(4) of the Act. Although the prosecution asserts that the search was conducted by a female constable, the personal search memo reveals that it was carried out in the presence of male witnesses. The mandate of Section 50(4) is that the search of a female accused must be conducted only by a female officer and in the presence of female witnesses, to ensure privacy and decency. This requirement is mandatory in nature.

4.4 Reliance is placed on **Naziyya Rabiul Islam v. State of Maharashtra (Bail Appln. 487/2024)**, **Zubedabi v. State of M.P. (Cr.A. 675/2004)**, and **Heena Bharat Shah v. State of Maharashtra (Bail Appln. 1049/2016)**, wherein courts have held that searching a woman in the presence of male



witnesses' amounts to violation of her fundamental right to dignity.

4.5 The petitioner, being a woman, is entitled to special consideration under the proviso to Section 437(1) CrPC. She has remained in custody for a considerable period, has no other criminal involvement, and her jail conduct is satisfactory. Reliance is placed on ***Sabbo @ Sahabana v. State (Bail Appln. 3999/2023 decided on 14.05.2024)*** and ***Jaya Karmakar v. State of West Bengal (Cr.A. 5449/2024, decided on 29.07.2024)***, where bail was granted in NDPS cases involving commercial quantity, on the ground that women accused are entitled to statutory protection under Section 437(1) CrPC.

5 Learned Special Public Prosecutor appearing for the prosecution opposes the bail inter alia stating that given the quantity and nature of the contraband, rigors of section 37 of the NDPS Act apply in full force.

6 Not only I find myself in agreement with the aforesaid argument but also with the reasons already recorded by the learned Sessions Judge in the order dated 16.01.2025 declining the concession of bail.

7 Moreover, though the petitioner seeks to cast doubt on the aspect that the search was not conducted by a female constable, be that as it may, assuming it was conducted by the male officials, fact remains that it was a search of the baggage and not of the petitioner. In light thereof, I am of the view that the over emphasis of petitioner being female and thus ought to have been searched by a female constable/official seems to be completely misplaced.

8 As regards other alleged procedural violation, reply to the bail application suggests nothing of the sort, nor is there anything else in support thereof, and in any case, same is a matter of trial and cannot be thrashed out



at bail stage. The relevant portion of the prosecution's reply, which directly addresses this issue, is reproduced herein for ready reference:

"2. Brief facts of the case are that on 30.01.2024 accused arrived at T-3, 1GI Airport from Addis Ababa by Flight No. ET 686. During search of her baggage 5.889 Kg Cocaine was recovered and same was brought in to India by her from abroad. The recovered contraband was seized under the provisions of the NDPS Act.

3. That during the investigation accused tenders her voluntary statement U/s 67 of NDPS Act, wherein she admitted the recovery of 5.898 Kg containing contraband. She also disclosed that she indulged in the drug smuggling for monetary benefits. Besides that she also disclosed other incriminating facts

4. That so far as sampling under provisions of Section 52A NDPS Act is concerned it is submitted that the sample proceeding were done within well in time.

5. That so far as the Special benefit under the provisions of Sec 437 (1) CRPC is concerned it is submitted that the sec 437 does not apply in the present case as quantity of the recovered substance is commercial in nature and embargo of section 37 of NDPS Act is govern the provision of bail.

6. That accused is involved in a serious case of drug peddling and quantity of the recovered drug is a commercial quantity and embargo of section 37 of the NDPS Act is applicable in the present case, therefore, accused is not entitle for bail.

7. That statutory presumption of Section 35 and 54 of the NDPS Act is also against the accused.

8. That since accused is a foreign national; there is strong possibility that she will not be available for further trial in case she is allowed to be released on bail."
(Emphasis supplied)

9 It is not possible to plant such huge recovery of 6.14 kg of cocaine by the prosecution. It is borne out from the bare facts that recovery was from the petitioner's baggage at the airport where CCTV is fitted.

10 The recovery of the contraband, ibid, constitutes commercial quantity, attracting the rigors of Section 37 of the NDPS Act, which places strict limitations on the grant of bail.

11 The contraband was recovered in the presence of witnesses after



serving notice under Section 50 NDPS Act, thereby establishing a strong presumption of culpability under Sections 35 and 54 of the Act. The fact that the petitioner arrived from Addis Ababa, which, it is informed is a known transit point for such activities, and is suggestive of involvement of an organized international drug trafficking.

12 If released, there is a grave risk that the petitioner, being not a resident/citizen of India, may abscond and evade trial, besides the possibility of influencing witnesses. The nature and gravity of the offence, involving trafficking of a highly addictive substance in such large quantity, pose a serious threat to public health and society at large. In light of the statutory bar under Section 37 and the absence of any material to satisfy this court that the accused is not guilty or unlikely to reoffend, the petitioner does not deserve the concession of bail.

13 Taking an overall view of the matter, I am of the opinion that no grounds are made out at this stage for interference.

14 The arguments raised on behalf of the petitioner, though noted, are matters that may appropriately be considered in the course of trial at the appropriate stage.

15 Accordingly, the present application stands dismissed.

ARUN MONGA, J

SEPTEMBER 3, 2025/SV