



2025:DHC:8246



\$~2

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 16.09.2025*+ **BAIL APPLN. 742/2025**

CISSY NAVYUGA

.....Petitioner

Through: Ms. Sana Juneja, Mr. Faraz
Maqbool (DHCLSC) and Ms.
Deepshikha, Advs.

versus

CUSTOMS & ANR.

.....Respondents

Through: Mr. Arun Khatri, SSC with
Ms. Shelly Dixit and Ms.
Anoudhka Bhalla, Advs.

CORAM:**HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****DR. SWARANA KANTA SHARMA, J. (Oral)**

1. By way of the present bail application filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereafter 'BNS'), the applicant seeks grant of regular bail in case number 10 SC 543/2022, pending before learned Special Judge (NDPS)-02, Dwarka Courts, Delhi, arising out of case no. VIII(AP)(10)P&I/3323-A/Arrival/2022, P.S. IGI Airport, for commission of offence punishable under Sections 21 and 23 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereafter 'NDPS Act').

2. Briefly stated, the facts of the present case are that the



applicant herein had arrived on 18.01.2022 at the IGI Airport, Terminal 3, New Delhi by flight no. FZ 620 dated 17.01.2022 from Uganda to Dubai and FZ 451 dated 18.01.2022 from Dubai to Delhi. Allegedly, the applicant's conduct was noted to be suspicious since her arrival; thus, she was diverted at the Green Channel for X-ray of her baggage as well as for her personal search. Thereupon, it emerged that she had hidden something in her cycling shorts, and upon deeper examination, 94 small-sized capsules and 1 large capsule packed in black colour polythene bag came to be recovered from her. Thereafter, off-white colour powder/granules weighing upto 1400 grams, inclusive of the weight of the packaging material, was found. Subsequently, the said packaging material was removed with the help of a sharp cutter, and the suspected narcotic substance was put in a transparent plastic container weighing 207 grams. It is stated that the transparent plastic box containing the narcotic substance had then been weighed, which was found to be about 1500 grams. The said off-white coloured compressed powder/granules, weighing about 1293 grams, was tested with the help of a detection kit, which gave a positive test for '*heroin*'. Accordingly, a panchnama in the presence of two independent witnesses, dated 18.01.2022, was drawn at the spot. Notices under Section 50 of NDPS Act and Section 102 of the Customs Act had also been issued by the custom officials.

3. Furthermore, in the course of investigation, necessary proceedings, viz., the recording of the applicant's statement under Section 67 of NDPS Act, and sampling of the substance under



Section 52A of NDPS Act before the learned MM had been done, whereafter charges under Sections 21(c) and 23(c) of the NDPS Act were framed against the applicant.

4. The learned counsel appearing for the applicant argues that the applicant has been falsely implicated in the present case, and that she had been invited by the CEO of Ambica Engineering Works to carry out an inspection of their factory in India, which aspect has not been investigated. It is argued that there have been serious procedural irregularities and discrepancies concerning the seizure, sampling, and manner of carrying out the proceedings in the instant case. Specifically, it is contended that the complaint on the one hand asserts that 5 capsules out of 1293 grams of the contraband had been sent as representative samples after 94 small-sized capsules and 1 large-sized capsule had been opened and the contraband substance in the container had been segregated in 2 different transparent boxes; however, on the other hand, the order of the learned MM records that 94 small-sized capsules and 1 large-sized capsules recovered were found intact, which appears contradictory. Moreover, it is contended that the proceedings under Sections 52A and 50 of the NDPS Act were not properly conducted. In this regard, reliance is specifically placed on decision in ***Bharat Aambale v. State of Chhattisgarh***: 2025 INSC 78 to contend that the same, constituting a material irregularity, ought to give rise to an adverse inference qua the respondent and thereby ensure to the benefit of the applicant. Lastly, it is argued that recording of prosecution evidence has yet not



concluded while the applicant continues to remain in custody for over 3 years now; in which light, the present bail application deserves to be allowed.

5. The learned SSC appearing for the respondents, on the other hand, submits that the quantity of contraband substance recovered from possession of the applicant is clearly “*commercial quantity*” within the meaning of the NDPS Act. This fact, therefore, invites the rigours of Section 37 of the said Act, which mandates the Courts to be satisfied that there are no reasonable grounds to believe that the applicant could not have committed the offences in question. Furthermore, it is contended that even if the argument of the petitioner that there have been some procedural irregularities and discrepancies is accepted as true, the same cannot be considered by this Court at the stage of deciding bail application; instead, they are a matter of trial. Lastly, it is contended that the trial in the present case is at a crucial stage and out of 12 prosecution witnesses, 6 have already been examined and thus, it is prayed that the present application be dismissed.

6. This Court has **heard** arguments addressed by the learned counsel for the applicant and the learned SSC appearing on behalf of the respondents, and has also perused the material on record.

7. From the material placed on record, it is evident that upon arrival of the applicant at IGI Airport, New Delhi, she was found in possession of 94 small capsules and 1 large capsule concealed in her



clothing, which on examination were found to contain off-white coloured powder/granules. The suspected substance, after being separated from its packaging, weighed about 1293 grams and, upon testing, gave a positive result for *heroin*. The recovery was effected in the presence of independent witnesses, and necessary proceedings under the NDPS Act were carried out at the spot.

8. The case of the prosecution is that the applicant, who is a resident of Uganda, had arrived in India with the contraband on the instructions of one Ms. Karolina, to whom she was to remain in contact after landing in Delhi, for the purpose of delivering the same to an unknown person, in consideration of a promised amount of 1000 US Dollars.

9. As the quantity of the contraband recovered in the instant case is to the tune of 1293 grams of heroin, the same amounts to a “*commercial quantity*” under Section 2(viia) of the NDPS Act. This invites the rigours of Section 37 of the Act, which places an embargo on the grant of bail by requiring *inter alia* a satisfaction of the Court to the effect that there are reasonable grounds for believing that the applicant is not guilty of the offence and that he or she is not likely to commit any offence while on bail. Furthermore, it is trite that the said provision has to be strictly construed at the time of deciding the bail application of the applicant [Ref: ***Union of India v. Prateek Shukla***: (2021) 5 SCC 430, ***State v. Lokesh Chadha***: (2021) 5 SCC 724, and ***Narcotics Control Bureau v. Mohit Aggarwal***: 2022 SCC Online SC 891]. Thus, the twin conditions under the said provision have to be



met by the applicant for the grant of bail.

10. In the present case, the applicant has not disputed the factum of recovery of contraband from her possession, though it is contended on her behalf that she was a victim of circumstances and had allegedly been duped by her company officials, as she was not aware of the contents of the packet she was carrying. This Court is unable to accept such an argument at this stage, that the applicant travelled from Uganda to Dubai and thereafter to Delhi while carrying a package containing such a large quantity of capsules, yet remained unaware of its contents. Even otherwise, at this stage, this Court is only required to take a *prima facie* view of the matter, and the allegations, supported by recovery, are that the applicant was found carrying commercial quantity of heroin from her conscious possession. Thus, no grounds are made out to reasonably believe, for the purpose of Section 37 of the NDPS Act, that the applicant is not guilty of the alleged offence.

11. The learned counsel for the applicant has also attempted to point out that there was non-compliance of certain provisions of NDPS Act, such as those relating to sampling of contraband (Section 52A), etc. However, in this Court's view, the said arguments are a matter of trial and cannot be adjudicated upon while considering the bail application. Further, though reliance has been placed on decision of the Hon'ble Supreme Court in ***Bharat Aambale v. State of Chhattisgarh***: 2025 INSC 78 to emphasize upon the significance of procedural compliances, particularly, Section 52A, in seizing and



preserving the contraband substances, vis-a-vis sustaining a conviction under the relevant provisions of the Act, the same is however of no help to the applicant at this stage as the observations in the said decision are essentially relevant at the stage of trial and conviction, and not while considering bail application. In this regard, it would be apposite to take note of the Hon'ble Supreme Court's observation in ***Narcotics Control Bureau v. Kashif***: 2024 SCC OnLine SC 3848 wherein it was held that any procedural irregularity or illegality found to have been committed in conducting the search or seizure during the course of investigation or thereafter, be it in reference to Section 52A or otherwise, does not entitle the accused to be released on bail.

12. This Court also notes that the trial in the case is at a crucial stage, and as informed by the learned counsel for the respondent, out of 12 prosecution witnesses, 6 have already been examined before the learned Trial Court. The aforesaid factors and reasons, coupled with the fact that the applicant is a foreign national and has no roots in the country, and taking into account the embargo under Section 37 of NDPS Act, this Court is not inclined to grant regular bail to the applicant/accused at this stage.

13. The bail application is accordingly dismissed.

14. It is, however, clarified that nothing expressed hereinabove shall tantamount to an expression of opinion on the merits of the case.



2025:DHC:8246



15. The order be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J
SEPTEMBER 16, 2025/A