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

+ **BAIL APPLN. 947/2025**

NAKAMYA MARY

.....Petitioner

Through: Mr. Javed Khan, Adv.

versus

NARCOTICS CONTROL BUREAU

.....Respondent

Through: Mr. Arun Khatri, SSC with Ms. Shelly
Dixit, Mr. T. Sebastian & Mr.
Devender Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

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28.05.2025

1. This hearing has been done through hybrid mode.
2. The present application under Section 483 read with Section 528 of the BNSS has been filed seeking regular bail in Case No. VIII/47/DZU/2021, under Sections 8(c)/22/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, (for short, 'NDPS Act') registered with NCB/respondent.
3. The case of the NCB/respondent as per the status report dated 21.04.2025 is that on 11.08.2021, Investigating Officer received information that RPF Nizamuddin has intercepted a lady of African origin, the present applicant, carrying some suspected materials which were believed to be Narcotic drug and Psychotropic substance and requested NCB, DZU for seizure of the suspected material. In pursuance of the said information, IO constituted a team and proceeded to Nizamuddin Railway station. On reaching there, RPF pointed out to the said lady, who was sitting near the main entry gate with her 02 bags. On asking about the material, said lady did not give any satisfactory reply and two officials of RPF agreed to join the NCB



team as independent witness to the search and seizure proceedings. Thereafter, on opening the bag, two packets were found. From the big size packet, a white coloured substance was found and with the help of field-testing kit, it was found positive for pseudoephedrine and on weighing, it came to be 7 kg. Then, the small sized packet was unwrapped and white coloured crystalline substance, which on enquiry from the present applicant was found to be Meth, and on weighing, it came out to be 200 grams (Commercial 50 gm). On the basis of the recovery made from the applicant and as per her statement recorded under Section 67 of the NDPS Act, she was arrested on 11.08.2021 for the commission of offences punishable under Sections 8(c)/22(c)/29 of the NDPS Act. As per the CRCL report, sample of 7 Kg of pseudoephedrine was tested negative and sample of 200 grams of substance tested positive for Methamphetamine. On completion of investigation, complaint was filed before the learned Special Court. Charges were framed and the case is presently at the stage of prosecution evidence before the learned Trial Court.

4. Learned counsel for the applicant submits that the latter has been falsely implicated in the present case and was arrested on 11.08.2021 and since then, she has been in judicial custody and has undergone incarceration for more than 3 years 9 months. It is further submitted that the prosecution had cited 17 witnesses, out of which only 5 have been examined so far and the trial is not likely to get concluded in near future. It is further submitted that no videography was done by the Investigating Officer during the seizure of the contraband in the present case. It is further submitted that no independent witnesses were joined by NCB in the present case. Reliance has been placed on the order dated 17.03.2025 passed by a Coordinate Bench of this Court in



BAIL APPLN. 4295/2024 to contend that the omission of videography and photography casts a doubt over the credibility of the alleged recovery and is a potential prejudice to the applicant/accused. Reliance has also been placed on **Mohd. Muslim @ Hussain v. State (NCT of Delhi), (2023) 18 SCC 166, Union of India v. K.A. Najeeb, (2021) 3 SCC 713, Rabi Prakash v. State of Odisha 2023 SCC Online SC 1109**, etc. in support of the present application on the ground of delay in trial.

5. *Per contra*, learned Senior Standing Counsel for the NCB/respondent, submits that there has been recovery of 200 grams of methamphetamine on the basis of a secret information from the possession of the applicant which is a commercial quantity and thus, the rigors of Section 37 of the NDPS Act are applicable to the present case. It is further pointed out that two independent witnesses have been cited by the prosecution.

6. Heard the learned counsel for the parties and perused the record.

7. Learned counsel for the applicant, apart from the contention that no videography and photography of the seizure of the contraband was done and the same will cast a doubt on the alleged recovery, has laid emphasis on delay in trial. The recovery of the contraband in this case was done on 11.08.2021 and on the same day, the present applicant was arrested. The prosecution complaint was filed on 01.02.2022 citing 17 witnesses. Charges have been framed by the learned Special Court and the matter is presently at the stage of prosecution evidence.

8. The Hon'ble Supreme Court in **Rabi Prakash (supra)**, has observed and held as under: -

“2.The prosecution case appears to be that the police party while on patrolling duty on 02.10.2019 at about 12.30 p.m. on Nandapur-Semiliguda road MDR-55, spotted one full body twelve wheeler Truck



(Eicher) bearing No.EB-13-BD-5753 coming from Nandapur side at a high speed and accordingly they chased and detained the truck at BodengaChhak and found three persons boarded in the said truck including the driver. Eventually, 247 kg. Ganja was recovered from the truck. The petitioner was one of the occupants of the truck and was arrested at the spot. He has been in custody for more than three and a half years. There are no criminal antecedents against the petitioner.

3. We are informed that the trial has commenced but only 1 out of the 19 witnesses has been examined. The conclusion of trial will, thus, take some more time.

4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent - State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.”

9. The Hon’ble Supreme Court in **Man Mandal and Anr. v. State of West Bengal, 2023 SCC Online SC 1868**, has observed and held as under: -

“2. Learned counsel for the petitioners submitted that the petitioners have been incarcerated for a period of almost two years and the trial is not likely to be taken up for hearing in the immediate near future.

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5. Learned counsel appearing for the State submitted that in view of the statutory restrictions under Section 37 of the NDPS Act and the quantity being commercial in nature, the present special leave needs to be dismissed.

6. Taking into consideration the fact that the petitioners have been incarcerated for a period of almost two years and the trial is not likely to be taken up for hearing in the immediate near future, we are inclined to grant bail to the petitioners.”

10. In the present case as well, the prosecution has cited 17 witnesses in the chargesheet, out of which 3 have been examined and two are partly examined



so far and trial is likely to take time to conclude. As per the nominal roll of the applicant, as on 21.05.2025, she has undergone incarceration for more than 3 years 9 months. The applicant has no previous involvements.

11. Considering the delay in trial and long incarceration of more than 3 years and 9 months, the embargo under Section 37 of the NDPS Act, in view of the aforesaid judgments passed by the Hon'ble Supreme Court, will not be applicable in the facts and circumstances of the present case.

12. In view thereof, the present application is allowed and the applicant is directed to be released on bail, on his furnishing a personal bond of Rs.50,000/- with one surety of like amount, to the satisfaction of the learned Trial Court/Link Court, further subject to following conditions: -

- i. The applicant shall not leave India without prior permission of the learned Trial Court.
- ii. The applicant shall intimate the learned Trial Court by way of an affidavit and to the Investigating Officer regarding any change in residential address.
- iii. The applicant shall appear before the learned Trial Court as and when the matter is taken up for hearing.
- iv. The applicant is directed to give her mobile number to the Investigating Officer and keep it operational at all times.
- v. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witness in any manner.

13. The application is allowed and disposed of accordingly.

14. Pending applications, if any, also stand disposed of.

15. Needless to state that, nothing mentioned hereinabove, is an opinion on the merits of the case and any observations made herein are only for the



purpose of the present bail application.

16. Copy of the order be sent to the concerned Jail Superintendent for necessary information and compliance.

17. Order be uploaded on the website of this Court *forthwith*.

AMIT SHARMA, J

MAY 28, 2025/nk/ns

Click here to check corrigendum, if any