



2025:DHC:7407



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Date of decision: 27th August, 2025**+ **BAIL APPLN. 1057/2025****PRINCE CHINECHEREM ONOH**

S/o Isaac Onoh

R/o 41 Enugu NGWO,
Nigeria.

.....Petitioner

Through: Arun K Shrivastava Shahina, Mr.
Praveen and Mr. Ashish Sindhu,
Advocates.

versus

STATE**GOVT OF NCT OF DELHI**

THROUGH SHO

Mohan Garden, New Delhi.

.....Respondent

Through: Mr. Utkarsh, APP for the State.

CORAM:**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)**

1. First Application under Section 483 Bharatiya Nagarik Suraksha Sanhita, 2023 (*hereinafter referred to as "BNSS"* read with Section 528 of BNSS has been filed on behalf of the *Applicant Prince Chinecherem Onoh* for grant of Regular Bail in case FIR No.655/2021 under Section 21 Narcotic Drugs and Psychotropic Substances Act, 1985 (*hereinafter referred to as "NDPS Act"*) and Section 14-A Foreigners Act, 1946.
2. The Applicant submits that he is innocent and has been falsely



implicated based on false, fabricated and concocted story advanced by the Prosecution. It suffers from serious discrepancies, infirmity and inherent contradictions which goes to the root of the matter. The Chargesheet had been filed without FSL Report and was incomplete entitling the Applicant to statutory Bail.

3. The *search and seizure procedure* also stands vitiated as it was not conducted in the presence of independent witnesses from the public and also was not in consonance with the mandatory provisions of *Section 42 and 50 NDPS Act*.

4. Admittedly, sample of the alleged recovered substance was not drawn at the spot at the time of seizure on 19.11.2021, but the sample was drawn on 20.11.2021 in the Court of Ld. MM in the proceedings under Section 52 of the NDPS Act, where the weight of the substance along with the polythene bag was found to be 282 grams, whereas the weight of the polythene bag along with its contents at the time of recovery was of 280 grams. *There is every possibility of the case property having been tampered.*

5. It is further submitted that the Applicant is languishing in jail since 19.11.2021 i.e. for more than 3 years. He is not required for investigations. The trial is likely to take long to conclude. The circumstances and the investigations conducted do not reflect any likelihood of the trial resulting in conviction. Keeping of Applicant in Jail for a longer period would not serve any purpose.

6. It is further submitted that the Applicant is not a previous convict. There is no circumstance suggestive of his likelihood of his fleeing or of repeating the offence if enlarged on Bail. He is a law-abiding person and



undertakes to co-operate with the Prosecution in the progress of trial and shall make himself available at all the stages of trial.

7. His Bail Application filed before the learned Special Judge, has been dismissed vide Order dated 22.10.2024.

8. *A prayer is made that he be granted Bail.*

9. The ***Status Report has been filed on behalf of the State***, wherein it is stated that on 19.11.2021 at about 12:30 P.M on the basis of a secret information, a raiding team was constituted and at about 03:40 P.M the Applicant was spotted walking towards Ganda Nala Road, matching the description provided in the secret information. He was intercepted and the procedure under Section 50 NDPS Act was duly forwarded. The Applicant opted to get the search conducted in the presence of a Gazetted Officer. Accordingly, ACP, Sub-Division, Najafgarh arrived on the scene and the personal search was conducted in accordance with law. From the right-side pocket of the black lower worn by the Applicant, a light brown powdery substance was recovered, which on testing was found to be *Heroin*. The *weight of the substance was found to be 280 grams*. Two samples of 10 gms each were drawn from the recovered heroin for the purpose of sending them to Forensic Science Laboratory for chemical analysis. Both the bulk quantity and the drawn samples were duly sealed with the seal of I.O. in separate parcels and the seal impression was preserved for evidentiary purpose. Necessary seizure memos were prepared on the spot. The Applicant was formally arrested on the spot under Section 21 NDPS Act. The grounds of arrest were conveyed to him orally and also through written Notice and his Arrest Memo was prepared in accordance with law. Information of his arrest was conveyed to his wife as per Section 50A Cr.P.C. He was then taken to



DDU Hospital for his medical examination and was subsequently produced before the Duty Magistrate.

10. The case property and the sample parcels were deposited in the Malkhana under proper entry and supervision. The FSL form and sealed samples were taken to the FSL, Rohini on 23.11.2021. *The FSL Report confirmed that the substance seized was Diacetyl Morphine (commonly known as heroin)*, a prohibited narcotic drug under the NDPS Act.

11. During custodial interrogation, the Applicant disclosed that he had obtained the heroin from Frank, a fellow Nigerian national. However, multiple raids were conducted, but he could not be apprehended and is absconding. FRRO and Nigerian Embassy was informed about the arrest of the Applicant.

12. After completion of the investigation, the Chargesheet under Section 21 NDPS was filed in the Court.

13. A **subsequent Status Report/Reply** has also been filed in the Court, wherein it is submitted that 4 out of 12 Prosecution witnesses have been examined. The Applicant is a Foreign national of Nigeria; if he is released on Bail, there is a strong possibility that he may jump the Bail. The Bail Application is, therefore, strongly opposed.

14. The Status Report be taken on record.

Submissions heard and record perused.

15. The Ld. Counsel has submitted that to meet the twin test as laid down in Section 37 NDPS Act for grant of Bail are that there should be shown that he had not committed the offence and that he is not likely to commit any offence, if he is admitted to Bail.

16. The ***first ground*** agitated on behalf of the Applicant to show that



there was no recovery made is that there was no compliance made of Section 50 or Section 52 NDPS Act. In so much as Section 50 NDPS Act is concerned, it has been specifically stated that on the option been given to the Applicant to get the search done in the presence of a Gazetted Officer, ACP was called on the spot and the search was conducted in his presence.

17. The **second contention** made was that the sample has not been drawn properly; while in the Status Report it has been stated that two samples of 5 grams each were taken on the spot, but in the Application under Section 52A filed before the Ld. M.M for taking the samples, it is recorded that two samples of 10 grams each were taken. It is asserted that there are material contradictions in the Chargesheet and the Status Report submitted on behalf of the State clearly reflecting that the case against the Applicant is completely concocted.

18. It is pertinent to note that the Certificate of Section 52A prepared by the Ld. M.M clearly records that two samples of 10 grams each were taken which were sealed, packed and are in accordance with prescribed procedure. It is the Certificate of Section 52A which shall prevail; rather than the submissions made in the Status Report which is nothing but a summary of the Chargesheet and the case of the Prosecution. Also, it cannot be overlooked that on recovery of contraband, a sample is taken on the spot and the second sample gets taken before the Ld. MM. Prima facie, there does not seem to be any contradiction and even if there is one regard to the weight of the samples taken of the heroin allegedly recovered from the Applicant, it is a matter of trial which cannot at this stage falsify the case of the Prosecution thereby entitling the Applicant to Bail.

19. The **third ground** which has been contended by the Applicant is that



there was a variation in the colour of the contraband as recorded at the time of seizure and what has been recorded in the FSL Report. The colouration of the sample is a matter to be explained by the Prosecution at the time of trial and simply on account of different description of colour of contraband, it cannot be held at this stage that the sample seized and the sample sent to FSL were different. It is all a matter of trial and no observation can be made that there was no offence committed by the Applicant.

20. It is also pointed out that when the packet with contraband was opened before the Ld. M.M, the weight was found to be 282 grams instead of 280 grams. However, the Ld. MM himself has observed in the Certificate of Section 52A that 2 grams difference of weight was because of the presence of moisture. This again is a matter of trial and cannot be considered at this stage.

21. It is next contended that the Chargesheet had been filed without an FSL Report, thereby entitling the Applicant to statutory Bail, for which reliance has been placed on Divyas Bardewa v. Narcotics Control Bureau Special Leave to Appeal (Crl.) No. 11628/2022 decided on 01.05.2023. However, the Chargesheet got filed in the Court in February 2022, but the Applicant never contended for a statutory bail. The FSL Report has already been received and the Charges have been framed. The Prosecution Evidence is in the process of being recorded. This ground also did not enure to the benefit of the Applicant.

22. The **next contention raised** is that the Applicant is in Judicial Custody since 19.11.2021 and the trial is likely to take long entitling the Applicant to Bail. While it is established from various judgments that delay in conclusion of trial is one of the grounds for Bail, but here is a case where 280 grams of



2025:DHC:7407



Heroin was recovered from him and there was a co-accomplice Frank who is absconding.

23. Considering the gravity of the offence and also that 4 Prosecution witnesses out of 12 have already been recorded, it cannot be said that there is inordinate delay but the trial is proceeding on its pace.

24. In the light of the aforesaid discussion, it is held that it is not a fit case for grant of Bail.

25. The Application is, therefore, dismissed and stands disposed of accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 27, 2025

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