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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 1101/2025**
CHISOM KIMELY ONYEMAApplicant
Through: Mr. Rohan Gupta, Adv.
versus
STATE (NCT OF DELHI)Respondent
Through: Mr. Naresh Kumar
Chahar, APP for the State
SI Jitender Singh, PS-
Burari
CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
% **19.03.2025**

CRL.M.A. 8329/2025 (for exemption)

1. Exemptions allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. The present application is filed seeking regular bail in FIR No. 121/2024 dated 27.02.2024 registered at Police Station Burari, Delhi for offences punishable under Sections 287/304A of the Indian Penal Code, 1860 ('IPC'). Chargesheet has been filed in the present case, under Sections 287/304/436/34 of the IPC and Sections 8/22/25/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act').
 4. Brief facts of the case are that on 25.02.2024, Burari Police Station received specific information from Uttam Nagar Metro Station that two unknown persons were brought in burnt condition to AIIMS Trauma Centre, Delhi by four bystanders and were declared dead by the doctor. They were found in burnt condition near Nawada Metro Station in Uttam Nagar, at 6:00 am on 24.02.2024. The address of the injured victims was found to
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be House No.101/17, Gali No. 19, B Block, West Kamal Vihar, Burari, Delhi (hereafter 'place of incident'), where the District crime team and FSL team were called for inspection. The exhibits were seized and taken into police custody. The FIR in the present case was registered at the instance of the Police.

5. As per the FSL Report, remnants of *Ganja* and Methamphetamine drug were found at the place of incident. It is further alleged that as per CCTV footage recovered from a nearby house, it could be seen that the applicant with the help of another person, was carrying the two injured victims in a cab when the fire broke out. It is stated that the applicant took the injured victims to Raj Nagar, Ext.-2, Uttam Nagar, Delhi instead of taking them to a hospital or informing the Police.

6. The applicant was thereafter arrested on 02.03.2024.

7. Prosecution alleges that the applicant along with co-accused person was involved in manufacturing of drugs, the chemical preparation of which led to an explosion at the rented accommodation of the applicant, that is, the place of incident, which has resulted in the death of two persons.

8. The applicant's bail application was dismissed *vide* order dated 10.09.2024 passed by the learned Special Judge, Tis Hazari Courts, Delhi (hereafter '**Trial Court**'), on the ground that the allegations are grave and serious in nature, and that the case was still at its initial stage. Thereafter, again on 16.11.2024, the applicant's bail application was dismissed *vide* the order passed by the learned Trial Court, while observing that no fresh ground has been made out for grant of bail to the applicant.

9. The learned counsel for the applicant submits that the applicant is innocent and she has been falsely implicated in the present case.

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10. He submits that the applicant did not have any personal hostility against the victims and had no motive or intention to cause the death of the victims, and thus, there is lack of *mens rea* on part of the applicant.

11. He submits that there are inconsistencies in the statements of the independent witnesses.

12. He submits that as per the case of the prosecution, remnants of *ganja* and methamphetamine was recovered from the burnt down room of one of the deceased, but nothing has been placed to establish the applicant's involvement in the present case.

13. He submits that the prosecution has failed to provide the quantitative weight of the alleged contraband and therefore Section 37 of the NDPS Act, will not be applicable in the present case.

14. He submits that the chargesheet has been filed in the present case and since the trial will take a long time to conclude, the applicant should be released on bail.

15. I have heard the learned counsel and perused the record.

16. 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/ applicant has committed the offence; circumstances which are peculiar to the accused/ applicant; 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.

17. In the present case, the allegations against the applicant are
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under Sections 287/304/436/34 of the IPC and Sections 8/22/25/29 of the NDPS Act. The investigation reveals that the explosion was caused at the residence of the applicant, wherein two individuals have lost their lives. The FSL Report indicates the presence of contraband substance— *Ganja* and Methamphetamine, which is stated to be manufactured in the premises. Moreover, there are prosecution witnesses that have identified the applicant and material evidence is yet to be examined. *Prima facie*, the investigation conducted so far does not indicate that the applicant is sought to be falsely implicated.

18. The nature and gravity of allegations are serious in the present case. Specific allegations have been made regarding the applicant's alleged involvement in the commission of the offence. The allegations in the present case are with regard to manufacturing of the contraband, which has led to the death of two individuals in the place of incident which was admittedly in possession of the applicant. It appears that she along with the co-accused person, was taking up illegal manufacturing of the contraband in the said premises and *prima facie* the actions of the applicant appear to be not only illegal but also rash and negligent.

19. The Hon'ble Apex Court in ***Gurdev Singh v. State of Punjab : (2021) 6 SCC 558***, underscored the fatal impact of dealing in narcotic substances. The relevant para is reproduced hereunder:

“16. While considering the submission on behalf of the accused on mitigating and aggravating circumstances and the request to take lenient view and not to impose the punishment higher than the minimum sentence provided under the Act it should be borne in mind that in a murder case, the accused commits murder of one or two persons, while those persons who are dealing



in narcotic drugs are instruments in causing death or in inflicting death blow to a number of innocent young victims who are vulnerable; it causes deleterious effects and deadly impact on the society; they are a hazard to the society. Organised activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances shall lay to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportions in the recent years. Therefore, it has a deadly impact on the society as a whole. Therefore, while awarding the sentence/punishment in case of the NDPS Act, the interest of the society as a whole is also required to be taken into consideration. Therefore, while striking a balance between the mitigating and aggravating circumstances, public interest, impact on the society as a whole will always tilt in favour of the suitable higher punishment. Therefore, merely because the accused is a poor man and/or a carrier and/or is a sole bread earner cannot be such mitigating circumstances in favour of the accused while awarding the sentence/punishment in the case of the NDPS Act. Even otherwise, in the present case, the Special Court, as observed hereinabove has taken into consideration the submission on behalf of the accused that he is a poor person; that he is sole bread earner, that it is his first offence, while not imposing the maximum punishment of 20 years' RI and imposing the punishment of 15 years' RI only."

(emphasis supplied)

20. It is pertinent to mention that while deciding the question of bail, the court must carefully balance the individual's right to liberty with the interests of justice. While the presumption of innocence and the right to liberty are fundamental principles of law, they must be considered in conjunction with the gravity of the offence and its impact on society.

21. It is pertinent to note that the grant of bail should not be



arbitrary or whimsical. The Hon'ble Supreme Court in *Neeru Yadav v. State of U.P. : (2014) 16 SCC 508*, where the Court, while setting aside the bail order, made the following observation:

*“16. The issue that is presented before us is whether this Court can annul the order passed by the High Court and curtail the liberty of the second respondent? We are not oblivious of the fact that liberty is a priceless treasure for a human being. It is founded on the bedrock of the constitutional right and accentuated further on the human rights principle. It is basically a natural right. In fact, some regard it as the grammar of life. No one would like to lose his liberty or barter it for all the wealth of the world. People from centuries have fought for liberty, for absence of liberty causes sense of emptiness. The sanctity of liberty is the fulcrum of any civilised society. It is a cardinal value on which the civilisation rests. It cannot be allowed to be paralysed and immobilised. Deprivation of liberty of a person has enormous impact on his mind as well as body. A democratic body polity which is wedded to the rule of law, anxiously guards liberty. **But, a pregnant and significant one, the liberty of an individual is not absolute. Society by its collective wisdom through process of law can withdraw the liberty that it has sanctioned to an individual when an individual becomes a danger to the collective and to the societal order. Accent on individual liberty cannot be pyramided to that extent which would bring chaos and anarchy to a society. A society expects responsibility and accountability from its members, and it desires that the citizens should obey the law, respecting it as a cherished social norm.** No individual can make an attempt to create a concavity in the stem of social stream. It is impermissible. Therefore, when an individual behaves in a disharmonious manner ushering in disorderly things which the society disapproves, the legal consequences are bound to follow. At that stage, the court has a duty. It cannot abandon its sacrosanct obligation and pass an order at its own whim or caprice. It has to be guided by the established parameters of law.”*

(emphasis supplied)

22. Being conscious of the fact that individual liberty holds immense significance, it is incumbent upon the Courts to examine and evaluate, albeit briefly, factors such as the *prima facie* case, the severity of the crime, and the accused's likelihood to tamper with evidence, among other considerations.

23. The contention on behalf of the applicant that the
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prosecution has not been able to show that the quantitative weight of the contraband and hence, the bar under Section 37 of the NDPS Act is not applicable, is fallacious.

24. Regardless of whether the rigours of Section 37 of the NDPS Act are attracted in the present case, it cannot be ignored that the allegations are with respect to illegal manufacturing of the contraband at the residence of the applicant. It is alleged that the contraband was being illegally manufactured in rash and negligent manner due to which there was an explosion at the place of incident resulting in the death of two individuals.

25. Even otherwise, no expert has been examined yet to state the potential quantity of the narcotic substance which was being manufactured in a given period at the place of incident. Whether the same was sufficient or not is a matter of evidence.

26. In the present case, the applicant has only spent over a year in custody. The case is at the stage of framing of charges. At this stage it cannot be presumed that it is implausible that the trial not will conclude in a timely manner.

27. The applicant is a foreigner and a Nigerian national. She allegedly indulged in manufacturing drugs at her rented accommodation in Delhi, which has also resulted in the death of two persons. In the event, the applicant is enlarged on bail, the possibility of the applicant interfering and intimidating the witnesses, at this stage, cannot be ruled out.

28. In such circumstances, this Court is of the opinion that the applicant has not made out a *prima facie* case for grant of bail.

29. 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.



30. The bail application is dismissed in the aforesaid terms.

AMIT MAHAJAN, J

MARCH 19, 2025