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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of decision: 24.04.2025***+ **BAIL APPLN. 1122/2024, CRL.M.A. 9814/2024****CHIZOBA JAMES**

.....Petitioner

Through: Mr. Tanvir Quiser and Mr.
Naved, Advs.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Raghuinder Verma, APP
for State with SI Deepak
Yadav, PS Narcotics Squad/SD.**CORAM:****HON'BLE MS. JUSTICE SHALINDER KAUR****SHALINDER KAUR, J. (ORAL)**

1. The present application has been filed under Section 439 of the Code of Criminal Procedure, 1973 (Cr.P.C.), seeking the grant of Regular Bail in FIR No. 0679/2022 (subject FIR) dated 08.12.2022, for the offences punishable under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) and Section 14 of the Foreigners Act, 1946, registered at Police Station Mehrauli, South District, Delhi.

2. The case of the prosecution, in brief, is that on 08.12.2022, Sub-Inspector Rajiv, posted at the Narcotics Squad, South District, New Delhi, received a secret information that a Nigerian national, allegedly



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involved in the supply of narcotic substances in South Delhi, would be present near the Gurudwara, Jain Dada Badi Road, Mehrauli, Delhi for the purpose of supplying Substances/Smack/Heroin to someone and that if he was apprehended, he would be caught with the contraband in possession.

3. The said information was conveyed to Inspector A.K. Jha and the secret informer was produced before him. Being satisfied with the veracity of the information, the same was duly forwarded to the ACP/Operations/South District, Shri Rakesh Kumar, who instructed SI Rajiv to take appropriate legal steps. Thereafter, SI Rajiv reduced the information into writing in the *Roznamcha vide* DD No. 4 dated 08.12.2022, in compliance with Section 42 of the NDPS Act. A raiding party comprising SI Rajiv, HC Kuldeep, HC Praveen, and Constable Chhotu Ram, accompanied by the secret informer, proceeded to the indicated location.

4. Upon reaching the spot, the raiding team strategically positioned themselves in anticipation of the arrival of the petitioner. At approximately 04:10 PM, a person of Nigerian origin (petitioner herein) arrived, who was identified by the informer and was accordingly apprehended.

5. The petitioner was informed in English about the grounds necessitating his search and was served with a notice under Section 50 of the NDPS Act, informing him of his right to be searched before a Gazetted Officer or Magistrate, and the option to search the raiding team. The petitioner declined both rights, stating that “*I’m not*



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carrying any drugs please let me go. I do not want my search by any Magistrate or Gazetted Officer also”. The said statement of the petitioner was recorded in his handwriting and was signed by him.

6. Upon personal search of the petitioner, a polythene packet, tied with a rubber band was recovered, from the front pocket of the petitioner’s jeans. Field testing of the substance therein revealed it to be *Methaqualone* drug. Further, upon being asked, the petitioner failed to produce any passport or visa. The recovered contraband, upon weighing, was found to be 55 grams gross weight (including the polythene). A *rukka* was prepared on site, invoking Section 22 of the NDPS Act and Section 14 of the Foreigners Act, and was entrusted to Constable Chhotu Ram, along with the seizure memo. The contraband was duly taken into custody in accordance with law. Pursuant thereto, the subject FIR was registered.

7. During investigation, the petitioner disclosed that he arrived in India, in April 2011 on a student visa, which expired in 2016. He further admitted to selling the contrabands in the Delhi NCR region for livelihood, allegedly on the advice of another Nigerian national and through an Indian National.

8. Following this, the grounds of arrest were formally communicated to the petitioner and a notice under Section 52 of the NDPS Act was served. He was then arrested.

9. Upon compliance with Sections 42 and 57 of the NDPS Act, the petitioner was produced before the learned Metropolitan Magistrate, Saket Courts, New Delhi. The application for drawing sample from



the seized case property was made on 20.12.2022 and was thereafter sent to the Forensic Science Laboratory (FSL) for analysis. Post completion of the investigation, the Charge sheet was filed on 04.02.2023 by the Investigating Officer before the competent court.

10. The petitioner thereafter moved his first application for bail before the learned Special Judge (NDPS), Saket Courts, which was withdrawn on 07.06.2023.

11. Subsequent to this, the FSL Report dated 21.09.2023 bearing No. SFSL/DLH/16535/CHEM/5877/22 was received, confirming the recovered substance to be *Methamphetamine* upon Chemical, TLC, FTIR(ATR), and GC-MS testing. A second bail application was filed by the petitioner, which was dismissed by the learned Additional Session Judge *vide* Order dated 16.09.2023.

12. The petitioner preferred a third bail application before the learned Additional Session Judge, which was again dismissed *vide* Order dated 03.02.2024, leading to the filing of the present application.

Submissions on behalf of the Parties

13. The learned counsel for the petitioner submits that the petitioner has been languishing in the judicial custody for a period extending to approximately two and a half years since the date of his arrest and that the trial shall take substantial time before it is concluded. Out of the sixteen witnesses, cited by the prosecution, only two witnesses have been examined thus far. Placing reliance on ***Victo Vecent Joseph vs The State of NCT of Delhi***, he submits that in view of the protracted



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nature of the trial and the unlikelihood of conclusion in near future, the continued incarceration of the petitioner would amount to undue prejudice to him.

14. He further submits that there has been gross violation of the mandate of Section 52A of the NDPS Act. He drew the attention of this Court to the fact that although the petitioner was apprehended on 08.12.2022, the application for drawing the sample was moved before the learned Metropolitan Magistrate only on 20.12.2022, after a delay of 12 days, which is not in compliance with the Standing Instruction No. 1/88 of the Narcotics Control Bureau, which mandates that such application ought to be made on the same day as the seizure. Thus, the undue delay caused, vitiates the prosecution case.

15. The learned counsel further contends that the safeguards prescribed under Section 55 of the NDPS Act were not adhered to. He submitted that the General Diary entry does not bear any endorsement by the Station House Officer (SHO) indicating the date on which the seized case property was received, which creates a doubt on the alleged recovery from the possession of the petitioner.

16. The learned counsel further contends that there is discrepancy between the case of the prosecution and the report of the Central Forensic Science Laboratory (CFSL). While the prosecution asserts that 55 grams of *Methamphetamine* was recovered from the petitioner, the CFSL report is stated to refer to the recovered substance as '*Amphetamine*', raising serious doubt on the recovery. Additionally, he contends that the quantity recovered, being marginally above the



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threshold for non-commercial quantity, ought not to be treated as a commercial quantity for the purposes of Section 37 of the NDPS Act.

17. Strenuously opposing the bail application, the learned APP appearing for the State submits that the quantity of contraband recovered falls within the category of commercial quantity for the purpose of granting bail under the NDPS Act and the mandate of Section 37 would squarely be applicable in the present case.

18. He emphasizes that the petitioner, being a foreign national, poses a significant flight risk and, if released on bail, may abscond or commit similar offences.

19. The learned APP further contends that all procedural safeguards and statutory requirements as per the NDPS Act were duly complied with during the investigation and arrest of the petitioner.

20. Concluding his submission, the learned APP further submits that due to possibility of the misuse of liberty and reengage in the criminal activities, no case for the grant of bail is being made out on behalf of the petitioner.

21. At the outset, it is to be noted that *vide* the Order dated 05.12.2024, the learned Predecessor Bench had directed the petitioner to submit on affidavit, in view of the fact that the petitioner was stated to have come to India on Student Visa in 2011 and the learned counsel appearing on behalf of the petitioner could not give satisfactory response as to whether after entering India, the petitioner had enrolled at any School, College, and University, the following were the queries posed to the petitioner: -



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*“3.1. On which category of visa did the petitioner first enter India and on what date;
3.2. What was the period of validity of the petitioner’s visa and passport; and
3.3. What activity did he engage-in since he entered India; and more particularly did the petitioner enroll at the educational institution for which he had obtained the student visa.”*

22. In response to the said queries, the petitioner has tendered an affidavit dated 22.04.2025 submitting that he came to India on 10.09.2011, on a Business Visa, valid for one year, for the purpose of doing business as he used to export Computer Test Book to Nigeria from India. Upon the expiry of his Visa, he took permission from the concerned Embassy for extending his stay in India, however, his documents were taken into possession by the Police at the time of his arrest.

23. Needless to say, the petitioner has failed to give satisfactory answers to the queries as raised *vide* the Order dated 05.12.2024. In fact, the same is in contradiction to his earlier statement made to the Police that he had entered India on a Student Visa.

24. The petitioner in his affidavit, is unable to give any details about his business or place on record any documents to establish that, he has been engaged in some business in India since 2011 till his arrest.

25. Now proceeding to the merits of the case, the main contention of the petitioner is that the prosecution has failed to comply with provision of Section 52A of the NDPS Act, stating that there is a delay of 12 days in moving the application for sample collection before the



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learned Metropolitan Magistrate, which is not in compliance with the Standing Instruction No. 1/88 of the Narcotics Control Bureau, which mandates that such application ought to be made on the same day as the seizure.

26. In this regard, we may note the observations made by the Supreme Court in ***Narcotics Control Bureau vs Kashif***, 2024 SCC OnLine SC 3848, wherein the Supreme Court has observed as under:-

“(39).The upshot of the above discussion may be summarized as under:

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(iii) The purpose of insertion of Section 52A laying down the procedure for disposal of seized Narcotic Drugs and Psychotropic Substances, was to ensure the early disposal of the seized contraband drugs and substances. It was inserted in 1989 as one of the measures to implement and to give effect to the International Conventions on the Narcotic drugs and psychotropic substances.

(iv) Sub-section (2) of Section 52A lays down the procedure as contemplated in sub-section (1) thereof, and any lapse or delayed compliance thereof would be merely a procedural irregularity which would neither entitle the accused to be released on bail nor would vitiate the trial on that ground alone.

(v) Any procedural irregularity or illegality found to have been committed in conducting the search and seizure during the course of investigation or thereafter, would by itself not make the entire evidence collected during the course of investigation, inadmissible. The Court would have to consider all the circumstances and find out whether any serious prejudice has been caused to the accused.

(vi) Any lapse or delay in compliance of Section 52A by itself would neither vitiate the



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trial nor would entitle the accused to be released on bail. The Court will have to consider other circumstances and the other primary evidence collected during the course of investigation, as also the statutory presumption permissible under Section 54 of the NDPS Act.”

27. A Co-ordinate Bench of this Court while dismissing the bail application of the accused in the case of **Somdutt Singh @Shivam v. Narcotics Control Bureau**, 2023:DHC:8550, has held as under:

*“16. Furthermore, recently a Co-ordinate Bench of this Court in **Surender Kumar (supra)** has observed that Section 52-A of the NDPS Act is directory in nature and non-compliance of the same, in itself, cannot render the investigation invalid. Accordingly, the bail application of an accused charged of illegally selling narcotic medicines was dismissed by taking into account that the case involved commercial quantity of such medicines.*

17. It is clear from a reading of the aforesaid judgments that there is no mandatory time duration prescribed for compliance of Section 52-A of the NDPS Act. Though it is desirable that the procedure contemplated in Section 52-A of the NDPS Act be complied with at the earliest, mere delayed compliance of the same cannot be a ground for grant of bail. The applicant will have to show the prejudice caused on account of delayed compliance of Section 52-A of the NDPS Act.”

(emphasis added)

28. A perusal of the aforesaid Judgments makes it evident that Section 52A of the NDPS Act does not stipulate any rigid or mandatory timeframe for its compliance. While it is undoubtedly advisable that the procedure envisaged under Section 52A is adhered to with promptitude, a mere delay in such compliance, absent



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demonstrable prejudice, cannot *ipso facto* constitute a ground for the grant of bail. It is incumbent upon the applicant to establish that the delay in compliance with Section 52A has resulted in prejudice so grave as to vitiate the fairness of the investigation or trial.

29. In view of the facts of this case, the learned ASJ has duly noted in the Order dated 06.09.2023, that the application for collecting sample was moved before the learned Metropolitan Magistrate within a period of 7 days. The petitioner may, in accordance with applicable law, could potentially contend prejudice caused on account of this delay, during trial, which would be addressed on the basis of the evidence led before the Trial Court.

30. Furthermore, there is no merit in the submission of the petitioner regarding alleged non-compliance with the safeguards contemplated under Section 55 of the NDPS Act. A perusal of the General Diary reflects that the entry pertaining to the case property was recorded after the concerned Inspector had satisfied himself regarding the seizure and the same was made post the receipt of the seized case property. The timing and contents of the said entry could be challenged by the petitioner during the course of the trial; however, the entry *prima facie* shows the receipt of the seized case property on 08.12.2022, the very date on which the recovery has taken place, thus, it does not warrant any interference at this stage.

31. The petitioner further contends that there exists a contradiction between the case set forth by the prosecution and the report of the CFSL. While the prosecution claims that 55 grams of



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Methamphetamine were recovered, the CFSL report is stated to have identified the substance as *Amphetamine*. It is also sought that the recovered quantity, being only marginally in excess of the threshold, ought not to be regarded as commercial quantity so as to attract the rigours of Section 37 of the NDPS Act.

32. It is of significance to note that the threshold for commercial quantity, in respect of both the aforementioned contraband substances, stands at 50 grams. The recovery effected from the petitioner being 55 grams, would fall within the ambit of commercial quantity as statutorily defined. Moreover, the contention of the petitioner pertains to the nature and extent of the recovered substance, matters which are to be determined on the basis of evidence at the stage of trial. At present, the quantity recovered, as per the prosecution case and *prima facie* accepted by the Trial Court, falls within the criteria of commercial quantity, thus, the invocation of Section 37 of the NDPS Act, in these circumstances, cannot be faulted.

33. Having regard to the totality of the facts and circumstances, particularly the recovery of commercial quantity of the psychotropic substance at the instance of the petitioner, the rigours of Section 37 of the NDPS Act stand attracted. There is nothing on record to indicate that the petitioner is *prima facie* not guilty of the alleged offence or that he is not likely to commit a similar offence if released on bail. In such circumstances, the twin conditions set out in Section 37 of the NDPS Act remain unfulfilled, and the petitioner is not entitled to the grant of bail at this stage.



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34. Accordingly, the present bail application with pending application stand dismissed.

SHALINDER KAUR, J

APRIL 24, 2025/ss/KP

Click here to check corrigendum, if any