



\$~5

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

+ **BAIL APPLN. 1268/2025, CRL.M.A. 9893/2025**

FRANK CLIFF

.....Petitioner

Through: Mr. Tanvir Quiser, Advocate.

versus

THE STATE GOVT. OF NCT OF DELHI & ANR.Respondents

Through: Mr. Tarang Srivastava, APP for State
with Ms. Sangeeta Malik, SI and
Mr. Kishan Chand, SI, PS-Bindapur,
Delhi.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **18.07.2025**

1. The present application filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (formerly Section 439 of the Code of Criminal Procedure, 1973)¹ seeks regular bail in FIR No. 397/2022, registered at P.S. Binda Pur, for the offences under Sections 8 and 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985.²

2. Briefly stated, the case of the Prosecution is as follows:

2.1. On 21st May, 2022, intelligence was received at the office of CAIFAN-1,³ Dwarka, indicating that between approximately 10:10 PM and 10:20 PM, a foreign national identified as Frank, allegedly involved in the distribution of Heroin, was expected to deliver a consignment of the

¹ "Cr.P.C."

² "NDPS Act"

³ Now, Anti-Narcotics Cell



contraband to an individual near Metro Pillar No. 764, in front of Samadhi Sathal, Najafgarh Road, Delhi. It was conveyed that, if a timely raid were conducted, the suspect could be apprehended in possession of the narcotic substance.

2.2. Pursuant to this information, a raiding team was constituted and, accompanied by the secret informant, proceeded to the specified location. Upon arrival, the informant identified the suspect (the Applicant), who was carrying a blue-coloured laptop bag. The suspect was immediately intercepted and was duly informed of the identity of the raiding personnel as well as the purpose of the investigation.

2.3. Subsequently, a notice under Section 50 of the NDPS Act was served upon the Applicant, informing him of his legal rights. Thereafter, Sh. Harish Kukreti, Assistant Commissioner of Police, Dabri, arrived at the location. In his presence, a search of the Applicant was conducted, during which a white polythene bag tied with a knot was recovered from the laptop bag in his possession. the bag was found to contain a white, crystal-like substance, which, upon preliminary testing with a field-testing kit, was confirmed to be Heroin, weighing 500 grams. Furthermore, the Applicant failed to produce a valid Indian visa or passport. As a result, the subject FIR was registered, and the Applicant was formally arrested on 22nd May, 2022.

2.4. The recovered samples were deposited at FSL, Rohini, and the expert analysis confirmed the presence of Heroin in the seized substance.

2.5. Upon completion of the investigation, a chargesheet was filed before the Trial Court. Charges were framed against the Applicant under Section 21(c) of the NDPS Act and Sections 14A and 14B of the Foreigners Act, 1946.



3. In the aforesaid factual background, counsel for the Applicant makes the following submissions seeking grant of regular bail:

3.1. The Applicant is innocent and has been falsely implicated in the instant case.

3.2. The Applicant was arrested on 22nd May, 2022, and has remained in custody for a period of 2 years, 11 months, and 23 days as of 14th May, 2025. It is submitted that the prolonged period of incarceration, without conclusion of trial, entitled him to grant of bail. In support of this contention, counsel refers to several decisions wherein this Court has granted bail in NDPS cases primarily on the ground of prolonged period of incarceration. Particular reliance is placed on the decision of this Court in *Victo Vecent Joseph v. State of NCT of Delhi*.⁴

3.3. It is further contended that the search and seizure in the present case were conducted by a Head Constable, in contravention of the provisions of Section 42 of the NDPS Act. The violation of this statutory requirement, it is submitted, vitiates the recovery process.

3.4. The Applicant has a clean past record with no criminal antecedents to his credit.

4. It is pertinent to note that although the Applicant has raised several other grounds in the bail application regarding procedural lapses in the search and seizure, the arguments addressed before this Court have been confined to two principal grounds: (i) prolonged period of incarceration; and (ii) non-compliance with Section 42 of the NDPS Act.

5. Mr. Tarang Srivastava, APP for the State, on the other hand, strongly opposes the present bail application, and raises the following grounds:

⁴ BAIL APPLN. 2570/2024.



5.1. The contraband recovered from the Applicant comprises 500 grams of Heroin, which qualifies as commercial quantity. Therefore, the Applicant is required to satisfy the twin conditions prescribed under Section 37 of the NDPS Act.

5.2. With respect to the judicial precedents cited by the Applicant concerning the grant of bail on the ground of prolonged incarceration, it is contended that in each of those cases, the Court took into consideration the entirety of the facts and circumstances, and not merely the length of custody, before granting bail.

5.3. The search and seizure in this case were conducted in the presence of the Assistant Commissioner of Police, Dabri, thereby ensuring due compliance with Section 42 of the NDPS Act.

5.4. Furthermore, an independent witness was present during the recovery process, and his statement was recorded under Section 161 of the Cr.P.C., wherein he supported the case of the Prosecution. The said witness is yet to be examined before the Trial Court. The State apprehends that granting bail to the Applicant at this stage may lead to intimidation or influence over the witness, which would adversely affect the ongoing trial.

6. The Court has considered the facts of the case and the contentions advanced by the parties. While evaluating a bail application, the Court must consider several factors, including whether there is a *prima facie* case or reasonable grounds to believe the accused has committed the offence, the likelihood of the accused repeating the offence, the nature and seriousness of the accusation, the severity of the potential punishment upon conviction, the risk of the accused absconding or fleeing if granted bail and the reasonable apprehension of witnesses being intimidated by the accused.



7. The Supreme Court has consistently held that denial of bail is the rule and its grant is an exception under Section 37(1)(b)(ii) of the NDPS Act.⁵ In the instant matter, the contraband recovered from the Applicant comprises heroin weighing 500 grams, which qualifies as commercial quantity. Therefore, the Applicant has to satisfy the twin conditions under Section 37 that: (i) that there are reasonable grounds to believe that the accused is not guilty of the offence, and (ii) that the accused is not likely to commit any offence while on bail.

The Test of Reasonable Grounds to Believe that the Accused is Not Guilty of the Offence

8. In the present case, a commercial quantity of contraband was recovered from a white polythene bag found inside the laptop bag in the possession of the Applicant, thereby establishing a direct connection between the Applicant and the alleged offence. Although the Applicant has alleged procedural irregularities in the process of search and seizure, the Prosecution has satisfactorily addressed these concerns in its status report, explaining that the search and seizure were conducted in compliance with the statutory requirements, including, *inter alia*, the service of notice under Section 50 of the NDPS Act, the Applicant being duly informed of his legal rights, and the search being conducted in the presence of an independent witness.

9. In response to the Applicant's contention that the search was conducted by a Head Constable in violation of Section 42 of the NDPS Act, Mr. Tarang Srivastava, APP for the State, has clarified that the entire operation was carried out in the presence of Sh. Harish Kukreti, Assistant

⁵ State of M.P. v. Kajda, (2001) 7 SCC 673.



Commissioner of Police, Dabri, thereby ensuring compliance with Section 42 and negating any allegation of procedural impropriety.

10. Moreover, it is pertinent to note that an independent witness was part of the raiding team at the time of the Applicant's apprehension. The said witness has supported the Prosecution's case in his statement recorded under Section 161 of the Cr.P.C. However, the witness is yet to be examined before the Trial Court. In view of the foregoing, there exists a reasonable apprehension that enlargement of the Applicant on bail at this stage may lead to intimidation or undue influence upon the said witness, thereby adversely affecting the ongoing trial.

11. In view of the aforementioned facts and circumstances, this Court is of the considered opinion that that the first requirement under Section 37 of the NDPS Act is not satisfied, as there do exist reasonable grounds to believe that the Applicant is *prima facie* guilty of the offence alleged under the Act.

Prolonged incarceration

12. Counsel for the Applicant has further contended that the Applicant has been in judicial custody for a period of approximately three years, and on that ground alone, ought to be released on bail due to the prolonged duration of incarceration. While this Court is cognizant of the fact that this Court and other courts have, in appropriate cases, taken into consideration the length of custody while adjudicating bail applications, it must be emphasised that period of custody cannot be considered in isolation, and must be evaluated in the context of the totality of facts and circumstances of each case.

13. For instance, the Applicant has placed specific reliance on a judgment



of this Court in *Victo Vecent Joseph*, wherein bail was granted to an accused charged under Section 21 of the NDPS Act. However, the facts of that case are clearly distinguishable and inapplicable to the present matter. In the said case, while the Court did take into account that the accused had remained in custody for over three years, it also noted that there was a material procedural lapse, namely, non-compliance with Section 42(2) of the NDPS Act, as the Daily Diary entry was not forwarded to the superior officer, as mandated under the said provision. On account of this procedural violation, along with other relevant considerations, the Court was satisfied that the twin conditions under Section 37 of the NDPS Act stood fulfilled, thereby justifying the grant of bail to the accused.

14. In contrast, in the present case, as already discussed hereinabove, the Applicant has failed to satisfy the first condition under Section 37 of the NDPS Act, namely, that there are reasonable grounds for believing that he is not guilty of the alleged offence. This materially distinguishes the present matter from the case of *Victo Vecent Joseph*, and accordingly, bail cannot be claimed solely on the ground of prolonged incarceration.

15. At this juncture, it is apposite to underscore that this Court is also conscious of the constitutional mandate under Article 21 of the Constitution of India, which guarantees the fundamental right to life and personal liberty. However, such a right is not unqualified, and must be balanced against the larger societal interest, particularly in matters involving serious narcotic offences. The magnitude of the contraband recovered, the grave nature of the allegations, and the overarching public interest in curbing drug trafficking tilt the scale against the grant of bail in the present case.

16. In light of the foregoing facts and circumstances, the Court is of the



opinion that the Applicant has not been able to overcome the threshold for grant of bail under Section 37 of NDPS Act, and is accordingly, not entitled to be released on bail.

17. Needless to state, any observations concerning the merits of the case are solely for the purpose of deciding the question of grant of bail, and shall not be construed as an expression of opinion on the merits of the case.

18. Accordingly, the bail application is dismissed, along with pending application.

SANJEEV NARULA, J

JULY 18, 2025

nk