



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

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Reserved on: 30th October, 2025

Pronounced on: 04th November, 2025

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BAIL APPLN. 1367/2025

JASCENT NAKALUNGI

D/O Late Ms. Margret

R/O Village Kyengera,

Nateete, Kampala,

Uganda, Africa

(Presently lodged in Tihar Jail)

.....Petitioner

Through: Mr. Anoop Kumar Gupta & Mr.
Rohan Gupta, Advocates.

versus

NARCOTIC CONTROL BUREAU

Delhi Zonal Unit,

West Block-1, Wing No. 7

R.K. Puram, Delhi

Through Director

.....Respondent

Through: Mr. Arun Khatri, Sr. Standing Counsel
(NCB), Ms. Poonam Rani, Shelly
Dixit, Tracy Sebastian, Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present Bail Application has been filed on behalf of the Applicant/Jascent Nakalungi, under Section 439 of the Code of Criminal Procedure, 1973 (erstwhile Section 483 read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita (BNSS)) for the grant of regular Bail in



SC No. 187/2021(Case No. VIII/01/DZU/2021) under Sections 8/21/23/29 of the NDPS Act.

2. The ASJ/Special Judge NDPS, New Delhi, dismissed the Applicant's second bail Application *vide* order dated 07.03.2025.

3. ***Briefly stated***, on 27.01.2021 a secret information was received by Sh. Anand Kumar, Intelligence Officer (IO), Narcotics Control Bureau (NCB). The information indicated that two Ugandan nationals, Jascent Nakalungi (the Applicant/accused) and Sharifah Namaganda, would be arriving at Terminal-3, IGI Airport, New Delhi, on 28.01.2021 *via* Air Arabia Airways Flight No. G9-463, and were suspected of carrying a large quantity of narcotic drugs in their check-in baggage.

4. On 28.01.2021, an NCB team was constituted. They kept surveillance near belt no. 14 at the IGI Airport arrival hall. The two women, matching the description, were intercepted after they collected their baggage.

5. The Applicant/Jascent Nakalungi picked up a sky-blue trolley bag, and the co-accused/Sharifah Namaganda, picked up a brown trolley bag. During the search of the Applicant's sky-blue trolley bag, substances were found concealed in the bottom and upper cavities.

6. From the bottom cavity, two polythene packets containing a white substance, which tested positive for Heroin, were recovered. The total weight was 4 Kg (marked 'A'). From the upper cavity, one polythene packet containing a white substance, which tested positive for Cocaine, was recovered. The weight was 560 grams (marked 'B').

7. From the brown trolley bag of co-accused/Sharifah Namaganda, a similar recovery was made: 4 Kg Heroin (marked 'D') and 510 grams Cocaine (marked 'E') from her brown trolley bag.



8. The total quantity of contraband recovered from the Applicant (4 Kg Heroin and 560 grams Cocaine) and the co-accused was commercial quantity.
9. Upon initial inquiry, the Applicant/Jascent Nakalungi, revealed that she was going to deliver both bags to a person in Vikaspuri near Pastry Place, New Delhi, and disclosed an Indian mobile number, 8929857072. Later that day, on 28.01.2021, an NCB team, along with the Applicant and co-accused/Sharifah Namaganda, proceeded to Pastry Palace, Vikaspuri. The Applicant called on the aforementioned mobile number. One person named Kingsley arrived and was intercepted by the NCB team. Kingsley admitted that he had come to receive the baggage containing the drugs. The Applicant/Jascent Nakalungi, was arrested on **28.01.2021** at 17:00 hours.
10. The Applicant and co-accused/Sharifah Namaganda and Kingsley, subsequently gave voluntary statements under Section 67 of the NDPS Act, in which they admitted their involvement. The Applicant specifically admitted of having made two previous trips in 2019, to deliver drugs in Mumbai and Delhi, and that her *cousin Sara* offered her 2,000 USD per trip.
11. The Chargesheet was filed on 26.07.2021, and charges were framed against the accused persons on 27.04.2022 under Sections 8/21/23/29 of the NDPS Act.
12. The Bail is sought on the grounds that Applicant has been in continuous judicial custody since 30.01.2021, for a period of about 4 years and 2 months. Her earlier Bail Application was dismissed by the Trial Court *vide* impugned Order dated 07.03.2025. The Chargesheet in the present case was filed on 26.07.2021; as such investigation is completed in the present case. Only **5 prosecution witnesses** have been examined to date, and there is “no foreseeable likelihood of its conclusion in the near future,” which is



argued to be a direct infringement upon the **fundamental right to a speedy trial** under Article 21 of the Constitution of India.

13. Reliance has been placed on Rabi Prakash v. State of Odisha, 2023 SCC OnLine SC 1109 to argue that **prolonged incarceration** “militates against the most precious fundamental right guaranteed under Article 21” and, in such a situation, **conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act**.

14. Further, the Applicant was not informed about the Grounds of her Arrest in writing, by way of notice under Section 52 NDPS Act and thus, the arrest is illegal.

15. It is further submitted that no audio-videography/ photography of search and seizure proceeding was conducted by the Prosecution, nor any efforts were made by the prosecution to obtain the CCTV Footage.

16. The Applicant/ accused is having clean antecedents.

17. Reliance has been placed on Vihaan Kumar v. State of Haryana & Anr., SLP (Crl.) (No.) 13320/2024, Rabi Prakash v. The State of Odisha, 2023 SCC OnLine SC 1109, Jitendra Jain v. Narcotics Control Bureau, 2022 SCC OnLine SC 2021, Dheeraj Kumar Shukla v. The State of Uttar Pradesh, SLP(Crl.)(No.) 6690/2022, Badsha Sk. v. The State of West Bengal, SLP (Crl.) (No.) 9715/2023, Man Mandal and Anr. v. State of West Bengal, 2023 SCC OnLine SC 1868, Pankaj @ Jatin v. State NCT of Delhi, in Bail Appln. 683/2024, and Nripendra Kumar v. The State of NCT Delhi and Anr., Crl.M.(Bail) 1874/2024.

18. The Applicant undertakes to appear before the court when required and is ready to comply with all the terms and conditions imposed by this Court.

19. *Thus, it is prayed that the Bail me be granted.*



20. The Respondent/NCB filed a Status Report dated 07.05.2025 strongly opposing the Bail Application of the Applicant/Jascent Nakalungi. The main grounds for opposition center on the recovery of commercial quantities of contraband and the applicability of the statutory bar under Section 37 of the NDPS Act.

21. The key points of the NCB's opposition, as detailed in the Status Report and the previous Reply to Bail before the Trial Court, are as follows:

22. The recovery from the Applicant's possession (sky-blue trolley bag) was 4 Kg Heroin and 560 grams Cocaine, both of which fall within the definition of commercial quantity.

23. It is submitted that due to the commercial quantity involved, the rigor of Section 37 of the NDPS Act applies. The NCB asserts that there are no reasonable grounds to believe that the Applicant is not guilty of the offence, and she is not likely to commit the offence again if released on Bail, thus failing the twin conditions for bail.

24. Further, the Applicant played an active role in illicit drug trafficking. She along with co-accused/Sharifah Namaganda and Kingsley, entered into a criminal conspiracy for illegally possessing and transporting drugs.

25. The Applicant disclosed that the contraband was to be delivered to an individual using mobile number 8929857072 at Pastry Palace, Vikaspuri. The subsequent controlled delivery operation led to the apprehension of co-accused Kingsley.

26. The Applicant tendered a Voluntary Statement under Section 67 of the NDPS Act, 1985 on 28.01.2021. In this statement, she admitted to travelling to India with drugs twice in 2019 and stated that her cousin, Sara, offered her USD 2,000 per trip for the delivery.



27. The NCB submitted that there is a risk of the applicant/accused, being a foreign national, absconding and fleeing from the course of justice if released on bail. The case of co-accused Kingsley, who had previously jumped bail, was also cited.

28. The NCB's earlier reply to bail in the Trial Court, cited a Supreme Court ruling emphasizing that "negation of bail is the rule and its grant an exception" under Section 37 of the NDPS Act, superseding leniency on the ground of prolonged custody in these cases.

29. The NCB rebutted the *ground of illegal arrest* due to non-communication of grounds of arrest in writing, citing Pankaj Bansal vs. Union of India, 2023 SCC OnLine SC 1244. It is asserted that the Applicant was arrested on 28.01.2021, and the said judgment does not have retrospective effect and is therefore, inapplicable to the facts of the present case.

30. The investigation is concluded, and the Chargesheet was filed on 26.07.2021. The matter is presently at the Prosecution Evidence stage, and 6 witnesses have already been examined.

31. Thus, it is prayed that the Application be dismissed.

Submissions heard and record perused.

32. In the present case, the recovery effected from the Applicant is 4 Kg Heroin and 560 grams Cocaine, both falling within the definition of commercial quantity, inviting the rigour of Section 37 of the NDPS Act, especially given the recovery of commercial quantities of contraband.

33. The twin conditions under Section 37(1)(b) of the NDPS Act impose a severe restriction on the grant of bail for offences involving commercial quantity. The Court must be satisfied that there are reasonable grounds for



believing that the accused is not guilty of such offence and that the accused is not likely to commit any offence while on bail.

34. The Applicant's voluntary statement recorded under Section 67 of the NDPS Act implicates her, as she admitted to transporting the contraband for 2,000 USD per trip and disclosed a history of drug delivery trips. This statement coupled with the seizure, indicates active involvement in illicit drug trafficking.

35. The learned Special Judge NDPS, while dismissing the second Bail Application on 07.03.2025, specifically held that "*it cannot be said that there are reasonable ground to believe that accused is not guilty of offence and is not likely to commit the offence again*" due to the recovery of commercial quantity, affirming the definite bar of Section 37 NDPS Act.

36. The evidence suggests a criminal conspiracy between the Applicant, co-accused/Sharifah Namaganda, and co-accused/Kingsley, along with associates like Frank and Sara, for the illegal trafficking of drugs. The accused persons were intercepted together.

37. The Applicant facilitated the apprehension of co-accused/Kingsley by calling the designated mobile number, which was followed by Kingsley's admission that he came to receive the contraband.

38. The Applicant and co-accused/Sharifah Namaganda, both Ugandan nationals, were found to be acquainted, which is corroborated by their joint check-in and documentation, suggesting mutual acquiescence and a larger network. The twin conditions of S.37 are not satisfied.

39. The Applicant seeks Bail primarily on the ground of long incarceration since 28.01.2021 and the undue delay in the completion of Trial, citing the infringement of her Fundamental Right under Article 21 of the Constitution



of India.

40. The Apex Court in Mohit Aggarwal (supra) has held that the length of the period of custody is not a determinative factor for granting Bail under Section 37. The gravity of the Offence and the stringent bar of the statute must be given precedence.

41. The Applicant relies on the judgment in Rabi Prakash (supra), to seek Bail on the ground of delay in conclusion of Trial and thus, prolonged incarceration.

42. It may be noted that the Trial is at the stage of recording Prosecution Evidence, with 6 out of 14 witnesses examined, as on 07.05.2025.

43. While a long period of pre-trial detention may be a mitigating factor, especially in cases of delay, the primary consideration in commercial quantity NDPS cases is still the **twin conditions of Section 37**, as reiterated by the Supreme Court in various judgments. The grant of Bail must yield to the larger interests of society, particularly when dealing with serious offences like drug trafficking.

44. The possibility of the Applicant, a **foreign national**, absconding if released on Bail is a serious risk.

45. It can also not be overlooked that some dates had to be granted as the accused were not produced or at times their counsels were not available. In the given circumstances, it cannot be held that there is inordinate delay in trial entitling the Applicant to bail.

46. The other ground for seeking bail is non-communication of grounds of arrest in writing. Prosecution has countered the Applicant's argument by stating that the arrest was effected on **28.01.2021**, which is prior to the pronouncement of the Pankaj Bansal (supra), and thus the judgment is



inapplicable. In any case, the arrest memo itself indicates that the grounds of arrest were explained.

47. In Criminal Appeal No.(s) 154-157 of 2020, State of Kerala Vs. Rajesh and others, the Apex Court has held liberal approach in the matter of bail under the NDPS Act, is uncalled for. The Apex Court in Anil Kumar Yadav Vs. State (N.C.T.) of Delhi and another, 2018(1) SCC 117 is that in serious crimes, the mere fact that the accused is in custody for more than one year, may not be a relevant consideration to release the accused on Bail.

48. The challenge that there was no audio-videography is a matter for trial and can be determined during Trial.

49. In light of the **nature and gravity of the offence**, the recovery of **commercial quantity of contraband**, and the bar imposed by **Section 37 of the NDPS Act**, and the materials on record, lead to the conclusion that there are **no reasonable grounds** for granting Bail to the applicant.

50. The present Bail Application is devoid of merit and is accordingly **dismissed**, along with pending Application(s), if any.

(NEENA BANSAL KRISHNA)
JUDGE

NOVEMBER 04, 2025/R