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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 1474/2025**

REHEMA NAMUGAMBWAApplicant

Through: Mr. Shiv Chopra, Adv.
(DHCLSC) with
Mr. Shravan Pandey,
Ms. Surbhi Arora &
Mr. Siddharth Arora,
Adv.

versus

CUSTOMSRespondent

Through: Mr. Shubham Tyagi, Sr.
Std. Counsel, CBIC &
Ms. Navruti Ojha, Adv.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
23.05.2025

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CRL.M.A. 11561/2025 (exemption from filing certified translated true typed copy of chargesheet & order dated 25.01.2024) & **CRL.M.A. 11562/2025** (exemption from filing copy of the status report filed before the Learned Trial Court)

1. Exemption allowed, subject to just exceptions.
2. The applications are disposed of.

BAIL APPLN. 1474/202

3. The present application is filed seeking regular bail in C. No. VIII(AP)10/P&I/3484-C/Arrival/2022 for offences under Sections 8/21/23/28 of the Narcotic Drugs and Psychotropic Substances Act, 1985, (Customs).

4. The applicant is stated to be an African national and was intercepted on suspicious movement. On 22.05.2022, the applicant arrived at the IGI Airport and was found to be carrying

BAIL APPLN. 1474/2025

Page 1 of 6



one brown colour trolley bag and a black coloured hand purse. During surveillance, the applicant was observed to be behaving in a suspicious manner which prompted her interception. Consequently, notice under Section 102 of the Customs Act, 1962 was served upon the applicant for her personal search and X-ray/screening of her body. Thereafter, on being asked, the applicant admitted to have swallowed some pallets of the capsules, which were recovered while she was admitted in Ram Manohar Lohia Hospital. Thereafter, a total of 892 grams of cocaine was recovered from 81 capsules.

5. The applicant is in custody since 26.05.2022.
6. This Court has perused the material on record.
7. 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 has committed the offence; circumstances which are peculiar to the accused; 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.
8. It is unequivocally established that, to be granted bail, the accused charged with offence under the NDPS Act must fulfill the conditions stipulated in Section 37 of the NDPS Act. Section 37 of the NDPS Act reads as under:

“37. Offences to be cognizable and non-bailable.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)—

- (a) every offence punishable under this Act shall be cognizable;*
- (b) no person accused of an offence punishable for*



offences under Section 19 or Section 24 or Section 27-A and also for offences involving commercial quantity shall be released on bail or on his own bond unless—

- (i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and
- (ii) where the Public Prosecutor oppose the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974), or any other law for the time being in force, on granting of bail.”

9. The accusation in the present case is with regard to the recovery of commercial quantity of contraband. Once the rigours of Section 37 of the NDPS Act are attracted, as provided under the Section, the Court can grant bail only when the twin conditions stipulated in Section 37(1)(b) of the NDPS Act are satisfied in addition to the usual requirements for the grant of bail— (1) The court must be satisfied that there are reasonable grounds for believing that the person is not guilty of such offence; and (2) That the person is not likely to commit any offence while on bail.

10. In the present case, on the basis of suspicion, the applicant was intercepted at the IGI Airport, New Delhi. Allegedly, the applicant subsequently admitted to have ingested capsules containing narcotic drugs whereafter, she was admitted to Ram Manohar Lohia Hospital, and a total of 81 capsules containing 892 grams of cocaine was found inside the body of the applicant.

11. The contraband was being carried by the applicant surreptitiously by ingesting the same, which clearly suggests that she was consciously facilitating the illegal trade of contraband. The same is sufficient to *prima facie* establish conscious



possession under the NDPS Act.

12. The Hon'ble Apex Court in ***Narcotics Control Bureau v. Kashif*** : 2024 SCC OnLine SC 3848, while interpreting the scope and mandatory nature of Section 37 of the NDPS Act, reiterated the well-settled position that Courts must strictly adhere to the statutory conditions for grant of bail in cases involving commercial quantity of contraband. It was held as under:

“COMPLIANCE OF THE MANDATE UNDER SECTION 37:

8. *There has been consistent and persistent view of this Court that in the NDPS cases, where the offence is punishable with minimum sentence of ten years, the accused shall generally be not released on bail. Negation of bail is the rule and its grant is an exception. While considering the application for bail, the court has to bear in mind the provisions of Section 37 of the NDPS Act, which are mandatory in nature. The recording of finding as mandated in Section 37 is a sine qua non for granting bail to the accused involved in the offences under the said Act. Apart from the granting opportunity of hearing to the Public Prosecutor, the other two conditions i.e., (i) the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that (ii) he is not likely to commit any offence while on bail, are the cumulative and not alternative conditions.*

9. *In State of M.P. v. Kajad², this Court while considering the scope of Section 37 in the light of the scheme of the Act, had observed that:—*

“A perusal of Section 37 of the Act leaves no doubt in the mind of the court that a person accused of an offence, punishable for a term of imprisonment of five years or more, shall generally be not released on bail. Negation of bail is the rule and its grant an exception under sub-clause (ii) of clause (b) of Section 37(1). For granting the bail the court must, on the basis of the record produced before it, be satisfied that there are reasonable grounds for believing that the accused is not guilty of the offences with which he is charged and further that he is not likely to commit any offence while on bail. It has further to be noticed that the conditions for granting the bail, specified in clause (b) of subsection (1) of Section 37 are in addition to the limitations



provided under the Code of Criminal Procedure or any other law for the time being in force regulating the grant of bail. Liberal approach in the matter of bail under the Act is uncalled for.”

10. Similarly, recently a three-Judge Bench in NCB v. Mohit Aggarwal³, considering the earlier judgments on the parameters of bail available under Section 37 of the said Act held that:

“The length of the period of his custody or the fact that the charge-sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the NDPS Act.”

13. The mere passage of time or pendency of trial, by itself, cannot constitute a ground to dilute the rigour of Section 37 where serious allegations and substantial recovery of commercial quantity are involved. Contraband was hidden inside the body and was expelled in the hospital. The same itself is sufficient to show at this stage, involvement of applicant in attempting to smuggle large quantity of contraband. Though the applicant has already spent around three years in custody, however, on the face of direct recovery of contraband that was hidden inside the body, no lenient view can be taken.

14. In the considered opinion of this Court, the stringent conditions for the grant of bail under Section 37 of the NDPS Act are not satisfied in the facts of the present case. The applicant has failed to overcome the twin threshold mandated by the said provision. Mere prolonged custody, the filing of the charge sheet, or the commencement of trial cannot constitute a ground to dilute the rigour of Section 37 of the NDPS Act where serious allegations and substantial recovery of commercial quantity are involved.



15. The allegations against the applicant are, undeniably, grave and serious in nature. The quantity of cocaine recovered exceeds the threshold for commercial quantity as prescribed under the NDPS Act. Having regard to the overall facts and circumstances of the case, the nature of the alleged offence, and the legislative bar contained in Section 37, this Court does not find it appropriate to enlarge the applicant on bail.

16. The present bail application is therefore dismissed.

17. 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.

AMIT MAHAJAN, J

MAY 23, 2025

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