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

+ BAIL APPLN. 4715/2024

ANGELLA MALUNONDA

.....Petitioner

Through: Mr. J.S. Kushwaha and Ms. Tanya
Kushwaha, Advocates.

versus

STATE GOVT OF NCT OF DELHI

.....Respondent

Through: Mr. Pradeep Gahalot, APP for the
State with SI Naveen Kumar, Anti
Narcotics Cell and ASI Kartar Singh,
Special Staff, Dwarka.

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+ BAIL APPLN. 1508/2025

IFEDI FRANK EZE

.....Petitioner

Through: Ms. Mamta Wadhwa, Advocate
(through Vc).

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Pradeep Gahalot, APP for the
State with SI Naveen Kumar, Anti
Narcotics Cell and ASI Kartar Singh,
Special Staff, Dwarka.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

21.05.2025

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1. This hearing has been done through hybrid mode.
2. The present applications under Section 483 read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (Sections 439 and 482 of the



Cr.P.C.) seek regular bail in case FIR No. 714/2021, under Section 21/25/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') and Section 14A of the Foreigners Act, 1946 registered at P.S. Uttam Nagar.

3. Both these applications are arising out of the same FIR and, therefore, are being disposed of *vide* this common order.

4. For the sake of reference, the applicant- Angella Malunonda in **BAIL APPLN. 4175/2024** is referred to as applicant no. 1 and the applicant- Ifedi Frank Eze in **BAIL APPLN. 1508/2025** is referred to as applicant no. 2.

5. It is noted that as far as applicant no. 1 is concerned, it is the second application seeking regular bail. The first application was dismissed as withdrawn *vide* order dated 21.08.2024 passed by a Coordinate Bench of this Court in **BAIL APPLN. 1313/2024**.

6. The case of the prosecution is that on 17.09.2021, a secret information was received at the office of Anti-Narcotics Cell, Dwarka, that a woman, *i.e.*, applicant no. 1 is involved in peddling of *heroin* and would come to deliver the said contraband in front of Metro Pillar No. 701, near H. No. WZ-1, Om Vihar Phase 1, Uttam Nagar, Delhi at around 01:00-01:15 P.M. As per the case of the prosecution, the information was processed and Mr. Vijay Singh, ACP/Operation Cell/Dwarka was informed about the said information. After completion of necessary formalities, a raiding team was constituted.

7. It is the case of the prosecution that the raiding team reached the street in front of the Metro Pillar No. 701 near H. no. WZ-1, Om Vihar Phase 1, Uttam Nagar, Delhi and, at about 03:40 PM, applicant no. 1 who was carrying a polythene bag in her right hand stood near the aforesaid address. The raiding team confirmed the identity from the informer and, thereafter, applicant no. 1



was apprised and upon interrogation, she informed her name and address. It is stated that a notice under Section 50 of the NDPS Act was served to her and, thereafter, a search was conducted in the presence of the ACP and during the search, the white coloured polythene bag carried by her was checked, out of which another polythene bag tied with knot was taken out and after opening the same, a white colour substance was recovered. By way of a field testing kit, the presence of *heroin* was confirmed and the weight of the same was found to be 362 grams.

8. On the basis of the aforesaid recovery, the present FIR was registered and investigation was conducted. Applicant no. 1 was produced before the Court and two days' police custody was sought. During further investigation, applicant no. 1 had disclosed about applicant no. 2 from whom she used to purchase the said contraband. Accordingly, at the instance of applicant no. 1, applicant no. 2 was arrested and after completion of necessary formalities, recovery of 345 grams of *heroin* was effected from applicant no. 2. After the investigation was complete, the chargesheet stands filed.

9. Learned counsel for the applicants submit that applicant no. 1 and applicant no. 2 are in custody since 19.09.2021 and 21.09.2021, respectively. It is submitted that the charges in the present case were framed by the learned Special Court on 31.05.2022 and out of 21 witnesses cited by the prosecution, only 2 witnesses have been examined so far. It is submitted that the delay in the present case with respect to the trial is substantial in nature. In addition, it is submitted that the applicants are not involved in any other previous offences.

10. *Per contra*, learned APP for the State submits that the recovery in the present case is commercial in nature and in view of the same rigours of



Section 37 of the NDPS Act would be applicable in the present case.

11. Heard the learned counsel for the parties and perused the records.

12. The Hon'ble Supreme Court in **Rabi Prakash vs. State of Odisha, 2023 SCC Online SC 1109** has observed and held as under:-

“2.The prosecution case appears to be that the police party while on patrolling duty on 02.10.2019 at about 12.30 p.m. on Nandapur-Semiliguda road MDR-55, spotted one full body twelve wheeler Truck (Eicher) bearing No.EB-13-BD-5753 coming from Nandapur side at a high speed and accordingly they chased and detained the truck at Bodenga Chhak and found three persons boarded in the said truck including the driver. Eventually, 247 kg. Ganja was recovered from the truck. The petitioner was one of the occupants of the truck and was arrested at the spot. He has been in custody for more than three and a half years. There are no criminal antecedents against the petitioner.

3. We are informed that the trial has commenced but only 1 out of the 19 witnesses has been examined. The conclusion of trial will, thus, take some more time.

4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent - State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS



Act.”

13. The Hon’ble Supreme Court in **Man Mandal and Anr. Vs. State of West Bengal 2023, SCC Online SC 1868** has held as under:-

“2. Learned counsel for the petitioners submitted that the petitioners have been incarcerated for a period of almost two years and the trial is not likely to be taken up for hearing in the immediate near future.

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5. Learned counsel appearing for the State submitted that in view of the statutory restrictions under Section 37 of the NDPS Act and the quantity being commercial in nature, the present special leave needs to be dismissed.

6. Taking into consideration the fact that the petitioners have been incarcerated for a period of almost two years and the trial is not likely to be taken up for hearing in the immediate near future, we are inclined to grant bail to the petitioners.”

14. In the present case, as noted hereinabove the prosecution has cited 21 prosecution witnesses out of which only 2 witnesses have been examined and trial is likely to take time to conclude. As per the Nominal Roll dated 14.05.2025 received from the Office of the Superintendent, Central Jail No. 6, Tihar, the applicant no. 1 has been in custody since 19.09.2021 which brings her custody period as on 13.05.2025, to 3 years 7 months and 25 days. As per the Nominal Roll dated 14.05.2025 received from the Office of the Superintendent, Central Jail No. 10, Rohini, the applicant no. 2 has been in custody since 21.09.2021, which brings his custody period as on 12.05.2025, to 3 years 7 months and 22 days.

15. Considering the delay in trial and long incarceration of more than 3



years and 7 months the embargo under Section 37 of the NDPS Act, in view of the aforesaid judgments passed by the Hon'ble Supreme Court, will not be applicable in the facts and circumstances of the present case.

16. In totality of the facts and circumstances of the case, the present applications are allowed. The applicants are directed to be released on bail, on their furnishing a personal bond of Rs. 50,000/- with one surety of like amount each, to the satisfaction of the learned Trial Court/Link Court, further subject to following conditions:

- i. The applicants shall not leave India without prior permission of the learned Trial Court.
- ii. The applicants shall intimate the learned Trial Court by way of an affidavit and to the Investigating Officer regarding any change in residential address.
- iii. The applicants shall appear before the learned Trial Court as and when the matter is taken up for hearing.
- iv. The applicants are directed to give their mobile number to the Investigating Officer and keep it operational at all times.
- v. The applicants shall not, directly or indirectly, tamper with evidence or try to influence the witness in any manner.

17. The applications are allowed and disposed of accordingly.

18. Pending application(s), if any, also stand disposed of.

19. Needless to state, nothing mentioned hereinabove is an opinion on the merits of the case and any observations made are only for the purpose of the present bail application.

20. Copy of the order be sent to the concerned Jail Superintendent for necessary information and compliance.



21. Order be uploaded on the website of this court *forthwith*.

AMIT SHARMA, J

MAY 21, 2025/bsr/sc

Click here to check corrigendum, if any