



\$~2

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

+ **BAIL APPLN. 1939/2025**

SUNDAY OKEKE UGWUOKE

.....Petitioner

Through: Mr. Meghan, Mr. Mohd. Javed and
Mr. Harshkant Tiwary, Advocates.
versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Tarang Srivastava, APP for State
with SI Gagandeep, PS-Anti-
Narcotics Squad, Outer District.

CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN

% **ORDER**
02.12.2025

1. The present petition has been filed on behalf of the petitioner under Section 483 BNSS/439 Cr.P.C. read with Section 528 BNSS/482 Cr.P.C. seeking regular bail in connection with FIR No. 435/2023, under Section 21/25 NDPS Act registered at PS-Nihal Vihar.
2. The case of the prosecution is that on 07.04.2023, ASI Rajender Prasad of Anti-Narcotic Squad, Outer District, received a secret information at about 3.30 PM that the petitioner herein, who is an African National, is running an 'African Kitchen' from Gali No.7 near Makkhan Property, D-Block Shiv Nagar, Nilothi Extension and is using the premises to supply



heroin in bulk in the areas of Chander Vihar, Nihal Vihar and NCR. The informant also stated that the said person would come out between 5-5.30 PM to supply heroin to someone at Tilak Nagar and if intercepted, commercial quantity of heroin could be recovered.

3. On the basis of said secret information, a raiding team was constituted and at about 5 PM, the team reached the given location, where an African national matching with the informer's description came out carrying *khakee* paper bag. He attempted to flee, but was overpowered and during search, after carrying out all legal formalities, total heroin weighing 1.01 Kg (commercial quantity) was recovered from him.

4. Mr. Meghan, learned counsel appearing on behalf of the petitioner submits that the petitioner is in custody since 11.04.2023 and the trial is moving at a very tardy pace. To substantiate his contention, he draws attention of the Court to the orders of the learned Trial Court dated 25.09.2024, 03.01.2025, 01.03.2025, as well as order dated 18.10.2025. A copy of order dated 18.10.2025 has been handed over across the bar, the same is taken on record.

5. He further contends that the raid was conducted at about 5-5.30 PM at a public place, but no independent witnesses were joined at the time of recovery, which itself creates doubt about the recovery. He further contends that no videography or photography was even carried out at the time of recovery. In support of his contention, he places reliance on the decision of the Coordinate Bench of this Court in ***Beneth Chukuwuddi v. State of NCT***



*of Delhi,*¹.

6. *Per contra*, Mr. Tarang Srivastava, learned APP appearing on behalf of the State has argued on the lines of the status report. He submits that non-joining of independent witnesses is not fatal to the prosecution case.

7. I have heard the Ld. Counsel for the petitioner as well as Ld. APP for the State and have perused the record.

8. A perusal of the order sheets placed on record, to which attention of the Court has been drawn, shows that despite repeated summons having been issued to the prosecution witnesses, the said witnesses have not turned up. On 25.09.2025, the learned Trial Court even issued bailable warrants against PW ASI Rajender Prasad and HC Kulbir, who are witnesses to the recovery. Again on 18.10.2025, bailable warrants have been issued against PW ASI Rajender Prasad.

9. Seemingly, PW ASI Rajender Prasad has not appeared for more than one year despite summons and bailable warrants having been issued against him. Therefore, this Court finds merit in the submission of learned counsel for the petitioner that the trial is getting delayed and the reason is clearly attributable to the prosecution witnesses. The prosecution has cited as many as 12 witnesses, and till date only one witness has been examined. The conclusion of trial is likely to take long time.

10. It is not in dispute that petitioner is in custody since 11.04.2023 and as per nominal roll he had been incarcerated for 2 years 03 months and 20 days as on 30.07.2025. Thus, as on date, petitioner has been incarcerated for

¹ BAIL APPL. 4295/2024; decided on 17.03.2025, [Paras 8, 9, 11, 19 and 20 thereof]



approximately 2 years and 08 months.

11. The law is well settled that prolonged incarceration, generally militates against the fundamental right of speedy trial 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. Reference in this regard may be had to the decision of the Hon'ble Supreme Court in ***Rabi Prakash vs. The State of Odisha***², wherein it was observed as under:

*“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.**”*

(emphasis supplied)

12. Likewise, in ***Naeem Ahmed Alias Naim Ahmad vs. Govt. of NCT of Delhi***³, the Hon'ble Supreme Court granted bail to the accused from whom commercial quantity of contraband was recovered, having regard to his custody of 01 year and 11 months, the fact that the accused had no criminal antecedents and that the conclusion of trial would take time. The relevant

² 2023 SCC OnLine SC 1109

³ 2024 SCC OnLine SC 220,



paras of the decision reads as under:

“8. It is informed by learned counsel for the parties that the appellant has, as on date, spent more than 01 year and 11 months in custody. The investigation is complete but framing of the charges is yet to be done. The conclusion of trial will thus take time. There are no criminal antecedents.

9. It is a seriously debatable question of fact whether the appellant was also found in the conscious possession of the contraband (smack). But such a question of fact will obviously be determined by the Trial Court at an appropriate stage. That being so, it seems to us that as of now, the twin test of Section 37 of the Act, need not be invoked against the appellant.

10. Taking into consideration the totality of the circumstances, especially the period of custody undergone by the appellant however, without expressing any views on the merits of the case, the appeal is allowed. Accordingly, the appellant is ordered to be released on bail subject to his furnishing the bail bonds to the satisfaction of the Trial Court.”

(emphasis supplied)

15. Likewise, in *Man Mandal & Anr. vs. State of West Bengal*⁴, the Hon’ble Supreme Court granted bail to the petitioners therein from whom commercial quantity of contraband had been recovered considering the fact that they had been incarcerated for a period of almost 02 years and the trial was not likely to conclude in the near future.

16. It is the case of the prosecution that the said raid was conducted during daylight hours i.e. around 05.00 - 05.30 P.M. in a public place.

⁴ 2023 SCC OnLine SC 1868,



Despite this, no public witnesses have joined nor any cogent explanation has been offered for the same. While the absence of independent witnesses may not be fatal to the case of the prosecution, it impacts the transparency and reliability of the search and seizure process, particularly at the stage of bail, where the Court must assess whether a *prima facie* case has been made out against the accused. Reference in this regard may be had to the decision of the Coordinate Bench of this Court in ***Beneth Chukuwuddi*** (supra) as well as ***Bantu v. State Government of NCT of Delhi*** ⁵. Likewise, Hon'ble Supreme Court in ***Shafhi Mohd. v. State of H.P.*** ⁶ has also emphasised that the video or photographic documentation of a crime scene, serves as a critical safeguard, ensuring transparency and accountability in the handling of evidence, which is evidently missing in the present case. The following observations from ***Beneth Chukuwuddi*** (supra) could beneficially be referred to:

“8. It is to be noted that the raiding party, acting on information received on 10th March, 2023, had sufficient time to secure independent witnesses before conducting the raid. However, no reasonable explanation has been provided for this omission. Since the alleged recovery took place in a public area, where securing independent witnesses would not have posed any practical difficulty, this lapse reflects a lack of diligence on the part of the investigating agency. While the absence of independent witnesses may not be fatal to the prosecution’s case per se, it does impact the transparency and reliability of the search and seizure process, particularly at the bail stage, where the Court must assess whether a prima facie

⁵ 2024 SCC OnLine Del 4671

⁶ (2018) 5 SCC 311



case has been made out against the accused.

9. This Court in **Bantu v. State Government of NCT of Delhi**,⁷ took note of the frequent and mechanical explanations offered for the non-joinder of independent witnesses in cases involving the seizure of contraband. **It was observed that the absence of independent witnesses, especially in crowded public places, warrants careful judicial scrutiny. This practice undermines the transparency of the seizure procedure and weakens the evidentiary value of the recovery. In the present case, the failure to associate independent witnesses, despite the raid occurring in a public location, indicates a lapse in the search process. While such lapses do not, by themselves, render the recovery invalid, they diminish the evidentiary value of the seizure and introduce reasonable doubt about the integrity of the prosecution's case, which becomes particularly relevant in cases under the NDPS Act, where strict compliance with procedural safeguards is imperative given the severe consequences involved.**

xxx

xxx

xxx

11. The Supreme Court, in the case of **Shafhi Mohd. v. State of H.P.**⁸ emphasised that the video or photographic documentation of a crime scene, serves as a critical safeguard, ensuring transparency and accountability in the handling of evidence. Further, in **Bantu**, this Court observed that in instances where videography or photography has not been undertaken, the prosecution can provide clear and valid justifications for such omissions. These judicial observations were made even prior to the enactment of the mandatory videography and photography requirements under the BNSS, illustrating that the Court has recognized the vital role of such documentation in ensuring the fair administration of justice.

⁷ 2024 SCC OnLine Del 4671

⁸ (2018) 5 SCC 311



XXX

XXX

XXX

19. Additionally, it is pertinent to note that the Applicant has been in custody for 2 years. Although the chargesheet has been filed, the charges are yet to be framed and there is no indication that the trial will conclude in the foreseeable future.

20. The right to life and personal liberty, enshrined under Article 21 of the Constitution of India, 1950, cannot be rendered nugatory by unwarranted delays in the judicial process. The prolonged incarceration undermines the fundamental right to personal liberty. The extended period of custody, combined with the delay in trial, justifies the Applicant's plea for conditional liberty through the grant of bail, thereby balancing the rights of the accused with the requirements of justice."

(emphasis supplied)

17. The nominal roll as well as previous conviction/involvement report shows that there is no previous involvement of the petitioner.

18. Having regard to the aforesaid circumstances, this Court is of the view that the petitioner has made out a case of regular bail. Accordingly, the petitioner is entitled to be enlarged on bail on furnishing a personal bond for a sum of INR 50,000/- with one surety of the like amount, subject to the satisfaction of the Trial Court/Duty MM, on the following conditions:

- a) The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
- b) The petitioner shall under no circumstance leave the country



without the permission of the Trial Court;

c) The petitioner shall appear before the Trial Court as and when directed;

d) The petitioner shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;

e) The petitioner shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times;

f) In terms of the judgment of the Supreme Court in ***Frank Vitus v. Narcotics Control Bureau & Ors***⁹, the State shall immediately communicate the order granting bail, to the concerned Foreign Registration Officer appointed under Rule 3 of the Registration of Foreigners Rules, 1992, who in turn, shall communicate the order to all concerned authorities including civil authorities in order to enable them to take appropriate steps under the Foreigners Act, 1946, the Registration of Foreigners Rules, 1992 and Foreigners Order, 1948, in accordance with law.

19. It is clarified that the observations made herein above are only for the limited purpose of deciding the present bail application and the same shall not be construed as an expression of opinion on merits of the case.

20. The petition is disposed of.

21. Copy of the order be forwarded to the concerned Jail Superintendent

⁹ (2025) 3 SCC 1



for necessary compliance.

22. Order *dasti* under signatures of the Court Master.

DECEMBER 2, 2025/jg

VIKAS MAHAJAN, J