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

+ **BAIL APPLN. 1972/2025**

UCHE MUKA

.....Petitioner

Through: Mr. Meghan, Mr. Mohd. Javed and
Mr. Harsh Kant Tiwari, Advocates.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Aashneet Singh, APP for State
along with SI Sunil, Anti-Narcotics
Cell, Dwarka, IO/ASI Vinod Kumar,
PS Mohan Garden.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

01.12.2025

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1. This application under Section 483 read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹ (corresponding to Sections 439 and 482 of the Code of Criminal Procedure, 1973²) seeks regular bail in proceedings arising from FIR No. 207/2023 dated 7th March, 2023, registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985³ at P.S. Dwarka North, Delhi.

2. The case of the prosecution, in brief, is as follows:

2.1. On 07th March, 2023, a team of Anti-Narcotics Cell, Dwarka,

¹ "BNSS"

² "CrPC"

³ "IPC"



deployed for verification of overstaying foreigners intercepted the Applicant, a Nigerian national, near Metro Pillar Nos. 857 at Kakrola, Dwarka. Noticing the police, he tried to flee but was apprehended. Upon being questioned, he admitted possessing drugs and produced a knotted white polythene bag from his jeans pocket and handed it over to HC Gopal. From this bag, white crystal-like substance was recovered. Thereafter, Insp. Subhash Chand was called to the spot, who conducted field-testing and the substance tested positive for Amphetamine, weighing 57 grams (including the polythene weight). The contraband was seized, sealed, and public witnesses declined to join the proceedings. Notice under Section 50 NDPS Act was served. The Applicant declined search before a Magistrate/Gazetted Officer. No further contraband was recovered during his personal search.

2.2. FIR was registered at P.S. Dwarka North, the Applicant was taken into custody on 7th March, 2023, and an intimation was sent to the Nigerian Embassy. Proceedings under Section 52A NDPS Act were thereafter conducted before the Magistrate, with two samples drawn from the contraband. One of the samples was sent to FSL Rohini, which report confirmed that the sample as Methamphetamine.

2.3. The investigation further revealed, based on CFB report, that no arrival/departure details of the Applicant could be traced and no valid travel or residential documents were produced by him, indicating illegal stay in India. After completion of investigation, a chargesheet was filed and charges under Section 22(c) NDPS Act and Section 14 of the Foreigners Act were framed against the Applicant. Fourteen witnesses were cited, of whom four have been examined.

3. Mr. Meghan, counsel for the Applicant, seeking regular bail for the



Applicant, makes the following submissions:

3.1. The prosecution case suffers from material contradictions going to the root of the alleged recovery. While the prosecution narrative states that the Applicant voluntarily produced a knotted white polythene bag from his jeans pocket *before* the arrival of Inspector Subhash Chand and handed it over to HC Gopal, the recovery witness PW-8, Insp. Subhash Chand, in his testimony on 29th November, 2025, categorically stated that “*on my instruction the superficial search of the accused Uche Muka was conducted by HC Gopal and during the same one knotted white polythene panny was recovered from right side pocket of his wearing blue colour jeans...*” [SIC]. PW-8 further stated that “*when I reached the spot the contraband was still in the pocket of the accused. The physical search of the accused started after four to five minutes of me reaching the spot. No notice U/s 50 NDPS Act was served upon the accused prior to his personal search*” [SIC]. This contradiction is fatal, as the prosecution’s version of voluntary production of contraband and the officer’s testimony of recovery during a search ordered by him cannot stand together.

3.2. PW-8’s admission that no notice under Section 50 NDPS Act was served prior to the personal search renders the alleged recovery illegal, particularly when the prosecution itself relies on a narrative of chance recovery triggering the obligation under Section 50 NDPS Act.

3.3. The absence of any independent witnesses, despite certain individuals allegedly present at the spot, and the lack of any videography/photography of the proceedings further erode the credibility of the alleged seizure. These omissions raise serious doubt regarding the genuineness of the seizure and the very conduct of proceedings at the spot. Consequently, the integrity of



the prosecution case is seriously undermined, and a likely acquittal cannot be ruled out.

3.4. The Applicant has undergone approximately 2 years and 8 months in custody, whereas only 4 out of 14 prosecution witnesses have been examined, and the trial is likely to take considerable time for completion. Given the slow pace of trial and the predominantly documentary nature of evidence, further incarceration serves no purpose.

3.5. Section 37 NDPS Act do not bar grant of bail where the accused appears *prima facie* innocent due to fundamental procedural lapses and contradictions in the prosecution evidence. The Applicant has clean antecedents, has been falsely implicated, and is being subjected to racial discrimination. His liberty is being curtailed without due process and keeping him in custody any longer would amount to punitive detention.

3.6. The Applicant is not a flight risk, there is no possibility of tampering with evidence or influencing witnesses, and his presence can be secured through stringent conditions. The Applicant expresses willingness to furnish reliable surety, cooperate with further proceedings, and comply with all conditions that the Court may impose.

4. On the other hand, Mr. Aashneet Singh, APP for the State, opposes the application and submits that 57 grams of the contraband was recovered from the possession of the Applicant, confirmed by the FSL report, attracting Section 22(c) NDPS Act and the bar under Section 37. The recovery was a chance recovery, and, although not necessary, the requirements of Section 50 NDPS Act were duly complied with. The non-joining of public witnesses or absence of videography is not fatal. The Applicant, being a foreign national with no entry or exit records, with no



passport recovered from him, poses a significant flight risk. Releasing him could jeopardize the trial as several witnesses remain to be examined.

Analysis

5. The Court has considered the aforementioned contentions and perused the material on record. Before turning to the facts, it is useful to recall the principles laid down by the Supreme Court in ***Mohd. Muslim v. State (NCT of Delhi)***⁴, on the manner in which Section 37 of the NDPS Act is to be applied at the stage of bail:

“21. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

*22. The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused's guilt may be proved. The judgments of this court have, therefore, emphasized that the satisfaction which courts are expected to record, i.e., that the accused may not be guilty, is only prima facie, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation (as held in *Union of India v. Rattan Malik*¹⁹). Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (ref. *Satender Kumar Antil supra*). Having regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail.”*

[Emphasis Supplied]

6. The prosecution alleges that 57 grams of Amphetamine (identified as

⁴ (2023) 18 SCC 166.



Methamphetamine as per the FSL Report), a commercial quantity, was recovered from the possession of the Applicant. While the prosecution case records voluntary production of the contraband before the arrival of the recovery witness, Inspector Subhash Chand, the said witness, in his deposition dated 29th November, 2025, stated that the contraband was recovered pursuant to his instructions after he reached the spot and that notice under Section 50 NDPS Act was not served prior to the personal search. These divergences in the sequence/manner of recovery and the manner of compliance with Section 50 NDPS Act have been relied upon by the Applicant. At this stage, the Court is conscious that it cannot conduct a detailed appreciation of these *prima facie* contradictions; however, the material indicates, on the face of it, divergence in the prosecution version that warrants closer scrutiny during trial. The question whether the recovery was truly a chance recovery, and whether Section 50 NDPS Act was duly complied with, are also matters to be adjudicated only after evidence is fully led.

7. Tested against the rigours of Section 37 NDPS Act, for the first prong, the Court notes that the *prima facie* divergences in the versions regarding the sequence/manner of recovery, the questions regarding compliance with Section 50, the absence of independent corroboration, and the surrounding circumstances collectively dilute the level of satisfaction required at this stage to justify continued detention. As regards the second prong, namely, whether the Applicant is not likely to commit any offence, it is noted that the Applicant has no prior criminal antecedents, his jail conduct is satisfactory, and he has not been involved in any previous criminal activity. He is a first-time offender, and there is no material indicating any propensity to reoffend.



Viewed cumulatively with the substantial period of custody already undergone, the completion of investigation, and the likelihood of further delay in conclusion of trial, the rigours of Section 37 stand sufficiently mitigated for the limited purpose of bail.

8. The Applicant is, therefore, directed to be released on bail on furnishing a personal bond for a sum of INR 25,000/- with two sureties of the like amount, subject to the satisfaction of the Trial Court/Duty MM, on the following conditions:

- a. The Applicant shall cooperate in any further investigation as and when directed by the concerned IO;
- b. The Applicant 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;
- c. The Applicant shall under no circumstance leave the country without the permission of the Trial Court;
- d. The Applicant shall appear before the Trial Court as and when directed;
- e. The Applicant shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;
- f. The Applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.
- g. The Applicant shall report to the concerned P.S. on the first Friday of each month. However, it is made clear that the Applicant shall not be made to wait for more than an hour.
- h. In terms of the judgment of the Supreme Court in ***Frank Vitus v.***



*Narcotics Control Bureau & Ors*⁵, the State shall immediately communicate the order granting bail, to the concerned 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

9. In the event of there being any FIR / DD entry / complaint lodged against the Applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

10. 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.

11. The bail application is allowed in the above terms and disposed of, along with any pending application(s).

SANJEEV NARULA, J

DECEMBER 1, 2025/MK

⁵ BAIL APPLN. 4187/2020.