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

+ **BAIL APPLN. 1979/2024**

JUSTICE UZOCHUKWU IGANTIUS

.....Petitioner

Through: Mr. Arun K. Srivastva, Mr. Ashish
Sindhu and Ms. Shaheena Praveen,
Advs.

versus

STATE GOVT. OF NCT OF DELHI

.....Respondent

Through: Mr. Yudhvair Singh Chauhan, APP
with SI Prem Narayan and ASI
Dinesh Kumar, Anti Narcotics Cell,
Dwarka.

CORAM:

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

% **04.11.2025**

1. The present application under Section 439 read with Section 482 of the Code of Criminal Procedure, 1973 ["Cr.P.C."] has been filed by the petitioner seeking regular bail in FIR No. 30/2023, registered at P.S. Mohan Garden, under Sections 8/22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ["NDPS Act"].
2. As per the prosecution case, on 19.01.2023, acting on specific information, the Anti-Narcotics Cell, Dwarka, conducted a raid near H. No. C-8/C, Ram Park Extension, Mohan Garden, New Delhi, where the petitioner, a Nigerian national, was apprehended. After being apprised of his rights under Section 50 of the NDPS Act, during his search in the presence



of the ACP, 60 grams of a white crystalline substance was found in his possession. The field testing kit identified the substance as *amphetamine*.

3. The recovered contraband, being of commercial quantity, was seized and sealed on the spot as Exhibit A-1. Accordingly, the petitioner was arrested on the same day i.e. on 19.01.2023 and has remained in custody since then. Investigation has since been completed and chargesheet under Sections 8/22 of NDPS Act has been filed before the learned Trial Court.

4. The petitioner's application for regular bail was dismissed by the learned Special Judge (NDPS)-01, South-West, Dwarka Courts, Delhi ["trial court"] vide order dated 19.01.2024. Being aggrieved, the petitioner has filed the present bail application.

Submissions on behalf of the Petitioner

5. Learned counsel submits that the petitioner is a Nigerian national who had come to India for medical treatment of cervical spondylitis. It is stated that the petitioner is innocent and has been falsely implicated in the present case. Ld. Counsel contends that there are significant procedural lapses in the case. Firstly, the alleged recovery was not effected in the presence of any independent public witness, which vitiates the proceedings under Section 50 of the NDPS Act.

6. It is further urged that there exists a serious discrepancy between the field test result and the FSL report. While the field kit identified the substance as *amphetamine* (entry 152 of the NDPS Schedule), the FSL confirmed the substance as *methamphetamine* (entry 159 of the NDPS Schedule)- which is a different and distinct psychotropic substance. This contradiction, it is argued, casts serious doubt on the integrity of the seized sample.



7. Learned counsel further submits that two representative samples of 5 grams each were drawn. However, the FSL report records the net weight of the sample as 4.4 grams, indicating possible tampering. It is stated that samples were not drawn on the date of recovery but subsequently, on 04.02.2023, before the Learned Metropolitan Magistrate. The samples were received in the Forensic Science Laboratory (FSL) on 06.02.2023. Since the samples remained in police custody for several days before being produced before the Magistrate, the possibility of tampering of case property exists.

8. Ld. counsel states that the petitioner has been in custody since 19.01.2023 i.e. for almost 2 years 10 months, has clean antecedents and there is no likelihood of him absconding or tampering with the evidence. Since the investigation stands concluded and the charge-sheet has been filed, his further detention would amount to violation of his fundamental right under Article 21.

9. In support, he placed reliance on judgment of Hon'ble Supreme Court in *Javed Gulam Nabi Shaikh Vs. State of Maharashtra and Anr. SLP(Crl) No. 3809/2024* and a Coordinate Bench of this Court in *Chibuzo @ Chibuzor Cristatus Vs. State (Govt. of NCT of Delhi) Bail Appln. 2251/2023* to contend that prolonged incarceration violates the right of speedy trial of the accused mandated under Article 21 of the Constitution.

Submissions on behalf of the State

10. *Per contra*, learned APP for the State opposes the bail application of the petitioner. It is submitted that the recovery from the petitioner constitutes a *commercial quantity*, and therefore, the rigours of Section 37 of the NDPS Act squarely apply. It is contended that both the search and seizure were conducted in accordance with Section 50 of the NDPS Act.



11. It was argued that the integrity of the seized sample stands fully established. The representative samples were drawn on 04.02.2023 before the learned Metropolitan Magistrate, sealed with the Magistrate's seal, and received in the FSL on 06.02.2023. As per the FSL report, the sample seals were found intact when received by the FSL.

12. The State further submits that the mere difference in terminology between *amphetamine* and *methamphetamine* does not absolve the petitioner, as both are psychotropic substances under the NDPS Act.

13. Lastly, it is submitted that 10 out of 14 witnesses have already been examined, and the trial is at a fag end. The petitioner being a foreign national, raises a real apprehension of absconding if released on bail. It is prayed that the bail application be dismissed.

Court Reasoning & Analysis

14. The Court has heard the arguments addressed by learned counsel for the respective parties and has perused the material on record.

15. The law relating to grant of bail in serious offences, particularly those involving offences under NDPS, is well settled. While personal liberty is a fundamental right under Article 21 of the Constitution, it must be balanced against the seriousness of the allegations, the nature of evidence, and the risk of tampering with the evidence or intimidating witnesses [*State of U.P. v. Amarmani Tripathi, (2005) 8 SCC 21*].

16. In the present case, as per the FSL report, the seized substance has been identified as *methamphetamine*. The Court notes that while there is a discrepancy between the field test kit's finding (*amphetamine*) and the finding of the FSL report (*methamphetamine*), both are psychotropic substances listed separately under the Schedule to the NDPS Act- as entries



152 and 159 respectively. However, such variance by itself cannot be considered fatal at this stage unless the integrity of the seized sample is demonstrably compromised.

17. The record indicates that two samples of 5 grams each were drawn before the learned Magistrate on 04.02.2023 and sealed in the presence of the Ld. Magistrate. The FSL has specifically recorded that “Seals was found intact and tallied as per forwarded specimen seal”- leaving no scope for doubt or tampering. The Court therefore finds no conclusive proof to infer tampering with the sample as the seal of the Magistrate was found intact and untampered.

18. The argument concerning the absence of public witnesses does not, by itself, render the recovery doubtful. The law is well-settled that non-joining of public witnesses, while desirable, absence of independent public witnesses does not automatically vitiate the prosecution case if the testimony of official witnesses is reliable and credible. [***Ajmer Singh v. State of Haryana, (2010) 3 SCC 746***].

19. As regards the plea of prolonged incarceration, the Court is mindful that the petitioner has remained in custody since 19.01.2023 i.e. for almost 2 years 10 months and that 10 out of 14 witnesses have already been examined. However, in cases involving *commercial quantity* under the NDPS Act, the legislative mandate of Section 37 places stringent conditions for the grant of bail. Unless the Court is satisfied that there are reasonable grounds to believe that the accused is not guilty of the alleged offence and is not likely to commit any offence while on bail, such relief cannot be extended. At this stage, in view of the nature of recovery and the evidence already on record, this Court is not persuaded to record such satisfaction.



20. While the Court acknowledges the petitioner's satisfactory jail conduct and medical history, these factors alone cannot override the statutory bar under Section 37 of the NDPS Act, in the absence of compelling circumstances establishing a prima facie case of false implication.

21. Having considered the totality of the facts, this Court finds no merit in the present bail application. The bail application is accordingly dismissed.

22. Nothing in this judgment shall tantamount as an opinion on the merits of the case and any observations made are only for the purpose of the present bail application.

RAVINDER DUDEJA, J

NOVEMBER 4, 2025/AK