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

+ **BAIL APPLN. 3040/2025**

KELVIN ABOAGYE

.....Petitioner

Through: Ms. Sushma Sharma, Mr. Girish
Kumar Sharma, Mr. R. Sahil, Ms.
Aayushi Gaur, Ms. Stuti Aggarwal &
Mr. Dhruv Kumar Sharma, Advocates

versus

NARCOTIC CONTROL BUREAU

.....Respondent

Through: SPP for NCB (appearance not given).

CORAM:

HON'BLE DR. JUSTICE SWARANA KANTA SHARMA

ORDER

15.10.2025

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1. By way of this application, the applicant seeks grant of regular bail in case No. VIII/58/DZU/2020, registered at Police Station Narcotics Control Bureau, Delhi for the commission of offence punishable under Section 21 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (hereafter '*NDPS Act*').
2. Issue notice. The learned SPP accepts notice on behalf of the respondent.
3. Brief facts of the case are that on 18.12.2020, Sh. R.K. Maurya, Intelligence Officer, Narcotics Control Bureau (NCB), Delhi Zonal Unit, had received information that one African national, Kelvin Aboagye, residing in Nawada Housing Complex, Uttam Nagar, New Delhi, was



involved in drug trafficking. The information was reduced into writing and placed before Sh. Dhananjay Some, Superintendent, NCB, who directed Sh. Chetan Sharma, Intelligence Officer, to constitute a team and take necessary action as per law. Pursuant thereto, a raid had been conducted by the NCB team along with independent witnesses at the said premises. On knocking, one African national had opened the door, who was later identified as Kelvin Aboagye (applicant herein). During the search, a carton box sealed with 'Aramex' tape and containing clothes was found. On closer examination, nine ladies' kurtis were recovered from the carton, and the buttons on the kurtis appeared suspicious. When one button was prised open with a plier, it was found to contain a small ball wrapped in transparent tape and carbon paper, containing an off-white powdery substance. The sample tested positive for heroin using the field testing kit. Thereafter, all buttons from the nine kurtis, i.e. 463 in total were opened, and each was found to contain similar off-white substance. On weighing, the total contraband recovered amounted to 290 grams of heroin, which was seized on the spot in the presence of independent witnesses. A notice under Section 67 of the NDPS Act had thereafter been served upon the present applicant. It is stated that on 19.12.2020, he tendered his voluntary statement in his own handwriting, wherein he admitted that the parcel had been sent by his brother from Johannesburg, South Africa, and that he had agreed to extract the heroin from the buttons and hand it over to his brother in lieu of ₹5,000/-. He also acknowledged the recovery and confirmed the search proceedings. In these circumstances, the applicant Kelvin Aboagye was arrested on 19.12.2020 at about 2:30 PM under Sections 8 and 21 of the NDPS Act.

4. The learned counsel appearing for the applicant argues that the



applicant has been falsely implicated in the present case. It is argued that there is delay in trial as the applicant has been in judicial custody for about 4 years and 7 months and till date, only 6 out of 10 prosecution witnesses have been examined; thus, the trial will take considerable time to conclude. It is also contended that the recovery proceedings were neither videographed or photographed despite availability of technical facilities, which casts doubt on the case of prosecution. It is also argued that the applicant herein was not informed of his grounds of arrest, which is in direct violation of Article 22(1) of the Constitution of India. Therefore, it is prayed that the present bail application be allowed.

5. The learned SPP appearing for NCB, on the other hand, argues that raid on the accused's rented house was conducted after receiving secret information, and all proceedings were completed in the presence of independent witnesses and in accordance with law. It is contended that the present applicant was apprehended at his residence, and 290 grams of heroin was found concealed in the buttons of ladies' kurtis. It is submitted that the recovered quantity of contraband is of commercial nature and thus, bar under Section 37 of NDPS Act is attracted. It is, therefore, prayed that the application for regular bail be dismissed.

6. This Court has heard arguments addressed on behalf of the accused and the NCB, and has perused the material available on record.

7. In the present case, upon perusal of the record, this Court finds that on 18.12.2020, during the search of the applicant's rented premises, 290 grams of heroin had been recovered, concealed within 463 buttons of nine ladies' kurtis kept inside a carton. On inspection, it was discovered that each button contained a small ball wrapped in transparent tape and carbon paper. Upon



testing, these balls were found to contain a white powdery substance, which tested positive for heroin. The recovery was effected in the presence of an independent witness and verified on the spot using a field testing kit, confirming the substance to be heroin.

8. The record also reveals that at the time of his arrest, the applicant had produced a passport bearing no. G1583936 in the name of Kelvin Aboagye, which was recovered from his possession. However, he later had produced another passport bearing no. A08733721 in the name of Romanus Chukwuweike Mbawelataonu. Pursuant to directions issued by Court, the accused was produced before the concerned Embassy, where verification revealed that the passport no. A08733721 was genuine and duly renewed, whereas passport no. G1583936 was found to be fake. However, the FRRO report indicated that no travel details of Romanus Chukwuweike Mbawelataonu were available between 24.10.2017 and 10.10.2024, suggesting that the applicant herein had entered India illegally or on a forged passport.

9. Insofar as the argument regarding non-supply of grounds of arrest is concerned, this Court notes that it is the specific case of the respondent that at the time of arrest, the applicant had been duly informed of the grounds thereof. The arrest memo of the applicant specifically mentions the recovery of 290 grams of heroin from his house, and it bears a note in the applicant's own handwriting acknowledging that he had been apprised of the grounds of his arrest. It is further material to note that upon being produced before the learned Magistrate on 19.12.2020, i.e., immediately after his arrest, the Investigating Officer had moved an application seeking his remand, which was allowed on the same day. Subsequently, the applicant was remanded to



judicial custody on later dates, and on each of these occasions, copies of the remand applications containing the grounds of arrest, i.e. the recovery of commercial quantity of heroin, were served upon him. The record also indicates that the applicant was represented by counsel during these proceedings. In view of these circumstances, it cannot, even *prima facie*, be held that the applicant was unaware of the reasons or grounds for his arrest. The material on record clearly establishes that he had been informed that his arrest was in connection with the recovery of 290 grams of heroin from his residence.

10. Therefore, in view of the recovery of 290 grams of heroin, which falls within the category of commercial quantity, the bar under Section 37 of the NDPS Act squarely applies to the present case. As per the said provision, before granting bail, the Court must be satisfied that there are reasonable grounds to believe that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. These twin conditions are mandatory and must be cumulatively satisfied. In the present case, recovery of commercial quantity of heroin was effected from the house of present applicant, in the presence of an independent witness, and no material has been placed on record to satisfy either of the twin requirements, and thus, the embargo under Section 37 of the NDPS Act operates against the grant of bail to the applicant.

11. In view of the above reasons, and considering the overall facts and circumstances of the case, and the fact that prosecution witnesses are being examined before the learned Trial Court, the present bail application is dismissed.

12. It is, however, clarified that nothing expressed hereinabove shall



tantamount to an expression of opinion on merits of the case.

13. The order be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

OCTOBER 15, 2025/zp