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

+ **BAIL APPLN. 3310/2024**

JONATHAN CHINONSO OBODOECHI

.....Petitioner

Through: Mr. Maneesh Bhardwaj and
Mr. Fahaad Siddiqui, Advocates.

versus

STATE (GOVT OF NCT DELHI)

.....Respondent

Through: Mr. Yudhvir Singh Chauhan, APP for
State.
Mr. Rajendra Meena, SI, Anti-
Narcotics Squad, West Distt.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **19.02.2025**

1. The present bail application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹ seeks grant of regular bail in the proceedings arising from FIR No. 362/2022 dated 16th June, 2022, registered at P.S. Janak Puri under Sections 419/471/474 of the Indian Penal Code, 1860² read with Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985³ and Section 14 of the Foreigners Act, 1946.

Prosecution's Case

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

2.1 On 16th June, 2022, at about 05:15 AM, SI Sandeep received secret

¹ "BNSS"

² "IPC"

³ "NDPS Act"



information indicating that a Nigerian citizen residing near Dwarka Mod, will come near a park at Major Deepak Tyagi Marg, on the road adjacent to Plazzo Inn Hotel, Janak Puri, between 06:30 to 07:00 AM, for the purpose of supplying heroin. In response, SI Sandeep, in compliance with Section 42 of the NDPS Act, assembled a team and set a trap near the said park.

2.2 At approximately 06:40 AM, an African person arrived on a scooty and stopped at the roadside. The suspected drug peddler/ Accused was identified by the informant, and was thereafter, apprehended by the raiding team. The Accused identified himself as Aboh Casmir Arinze S/o Aboh, residing in Anambra State, Nigeria, aged 28 years.

2.3 In compliance with Section 50 of the NDPS Act, a search was conducted. While nothing was recovered from the personal search of the Accused, however examination of the scooty bearing registration number DL9SBE3638 led to the recovery of 302 grams of heroin. This resulted in the registration of the impugned FIR.

2.4 The Accused was interrogated and arrested on the same day, i.e., 16th June, 2022. He revealed that he used to procure drugs from one Ekpo, a Nigerian national currently residing in Mohan Garden. Further investigation established that the Accused's true name was Jonathan Chinonso Obodoechi, son of Obodoechi, residing in Awka, Nigeria (the Applicant). Accordingly, the name was updated.

2.5 Samples of the contraband were drawn and sent to FSL as per the procedure under Section 52A of the NDPS Act. The expert opinion confirmed that the sample contained Diacetylmorphine, 6-Monodactyl morphine, acetyl codeine, dextromethorphan, caffeine, and acetaminophen, which was submitted in the supplementary charge sheet.



2.6 During further investigation, the Applicant's passport and Indian visa were sent for verification to the Nigerian Embassy and the Ministry of External Affairs. The Nigerian Embassy verified the authenticity of the passport; however, the Indian visa was found to be fake. As a result, Section 419/471/474 of the IPC and Section 14 of the Foreigners Act were added to the case. The charge sheet was filed on 12th December, 2022.

ARGUMENTS ADVANCED

Applicant's Case

3. Against this backdrop, counsel for the Applicant makes the following submissions:

3.1 The FIR as well as the final report under Section 173 of the Code of Criminal Procedure, 1973,⁴ reflect the name of Aboh Casmir Arinze in Column No. 11. Therefore, the charge sheet has not been filed against the present Applicant, Jonathan, as his name is not mentioned in the said report.

3.2 The Applicant has no prior criminal antecedents. Furthermore, he has already been in incarceration for over two years and six months. Moreover, the examination of 18 witnesses is still pending before the Trial Court. Therefore, given the anticipated length of the trial, the Applicant should be released on bail. In this regard, reliance is placed on the judgements of the Supreme Court in *Dheeraj Kumar Shukla v. State of U.P.*⁵ and *Rabi Prakash v. The State of Odisha*.⁶

3.3 The Prosecution has failed to examine any independent witnesses to establish the veracity of the case, nor has any videography or photography been conducted by the officers.

⁴ "Cr.P.C."

⁵ *Dheeraj Kumar Shukla v. State of U.P.*, 2023 SCC OnLine SC 918.



3.4 The Prosecution has failed to disclose the source or supplier of the contraband, nor has it identified any buyer or customer with whom the Applicant is alleged to have engaged in the sale or purchase of the alleged contraband.

3.5 The investigation of the case has been completed by the Investigating Officer,⁷ and the charge sheet stands filed. Therefore, there is no necessity for the continued detention of the Applicant in custody.

Respondents' Case

4. On the other hand, Mr. Yudhvir Singh Chauhan, APP for the State, strongly opposes the bail application, and makes the following submissions:

4.1 The quantity of the contraband recovered from the Applicant falls under the category of commercial quantity. Therefore, the Applicant must fulfil the twin conditions stipulated under Section 37 of the NDPS Act.

4.2 The Applicant is a Nigerian national, who entered India using a fraudulent visa. According to the stamps on the Applicant's passport, he entered the country illegally via the Bangladesh border, as the most recent stamp on his passport indicates his arrival at Dhaka International Airport. This raises a significant concern that the Applicant may abscond if granted bail.

4.3 The proceedings in the case are progressing and are likely to conclude in the near future, rendering the Applicant's ground of inordinate delay in the conclusion of trial untenable.

ANALYSIS AND FINDINGS

5. The Court has considered the facts of the case and the contentions

⁶ Rabi Prakash v. State of Odisha, 2023 SCC OnLine SC 1109.

⁷ "IO"



advanced by the parties. While evaluating a bail application, the Court must consider several factors, including whether there is a *prima facie* case or reasonable grounds to believe the accused has committed the offence, the likelihood of the accused repeating the offence, the nature and seriousness of the accusation, the severity of the potential punishment upon conviction, the risk of the accused absconding or fleeing if granted bail and the reasonable apprehension of witnesses being intimidated by the accused.

6. In the instant matter, the contraband recovered from the Applicant comprises heroin weighing 302 grams. As a result, the provisions of Section 37 of the NDPS Act are attracted, which impose stringent conditions for the grant of bail.

7. Thus, the Court can grant bail only after hearing the Public Prosecutor, and upon being satisfied of the following twin conditions: (i) that there are reasonable grounds to believe that the accused is not guilty of the offence, and (ii) that the accused is not likely to commit any offence while on bail. Accordingly, the Court proceeds to examine the grounds raised by the Applicant to determine whether the conditions under Section 37 are satisfactorily met.

The Test of Reasonable Grounds to Believe that the Accused is Not Guilty of the Offence

Absence of Independent Witnesses

8. The Applicant has pointed out the Prosecution's failure to include independent witnesses during the search and seizure operations, arguing that the lack of independent witnesses casts doubt on the fairness and credibility of their case.

9. In this regard, it is crucial to note that the raiding party received secret



information at around 05:15 AM on 16th June, 2022, while the raid was conducted at around 06:40 AM, indicating that there was sufficient time to secure independent witnesses before conducting the raid. Furthermore, the raid was conducted near a park at Major Deepak Tyagi Marg, Near Hotel Plazzo Inn, Janak Puri, which is a public place.

10. This Court in ***Bantu v. State Government of NCT of Delhi***,⁸ has observed that the absence of independent witnesses, especially in crowded public places, undermines the transparency of the seizure procedure and weakens the evidentiary value of the primary evidence in NDPS cases. In the present case, the failure to include independent witnesses, despite the raid occurring in a public location, indicates a procedural irregularity in the search process. While such procedural omissions may not outrightly invalidate the Prosecution's case, they significantly undermine the transparency and credibility of the search and seizure process. This is particularly relevant at the stage of grant of bail, as it is essential to ensure that the rights of the accused are not unjustly curtailed.

Omission of Videography and Photography

11. The Applicant has also highlighted the Prosecution's failure to produce any videographic or photographic evidence of the alleged recovery.

12. The Supreme Court has consistently reiterated the significance of video recording the recovery process especially in cases involving commercial quantities of narcotic substances, emphasising that the video or photographic documentation of such recoveries ensures. The Supreme Court has emphasized that in instances where videography or photography is not undertaken, the Prosecution must provide clear and valid justifications for



such omissions.⁹

13. The Prosecution has failed to provide any justification for not undertaking videography or photography during the recovery process. The absence of this safeguard leaves the recovery process open to question, as there is no independent evidence to corroborate the police's account. This omission, coupled with the lack of independent witnesses, casts a shadow over the credibility of the evidence and increases the potential for prejudice against the accused. Taken together, these lapses weigh in favour of granting bail to the Applicant.

14. Consequently, the non-compliance with the aforesaid safeguards, *prima facie* satisfies the first condition set out under Section 37(1)(b)(ii), in favour of the Applicant.

No Likelihood of Committing an Offence on Bail

Criminal antecedents

15. As regards the second condition of Section 37(1)(b)(ii), it is imperative for the Court to be satisfied that the Applicant is not likely to commit an offence while on bail. This condition also serves as a critical safeguard to ensure that granting bail does not result in any potential risk to public safety or impede the administration of justice.

16. In the instant case, it has been submitted that the Applicant has no prior criminal antecedents. The absence of any prior criminal record is a significant factor, distinguishing the Applicant from habitual or repeat offenders. This lack of antecedents supports the conclusion that the Applicant is unlikely to commit any offence while on bail.

⁸ 2024 SCC OnLine Del 4671.

⁹ Shafhi Mohd. v. State of H.P., (2018) 5 SCC 311.



17. Resultantly, both essential requirements under Section 37(1)(b)(ii)—reasonable grounds to believe the Applicant is not guilty of the offence and an assurance that the Applicant is not likely to commit an offence while on bail—have been satisfactorily met.

Delay in Trial

18. Pertinently, it must also be noted that as per the nominal roll, as on 7th December, 2024, the Applicant had been in incarceration for 2 years, 5 months and 22 days. Therefore, as on date, the Applicant has been in custody for approximately 2 years and 8 months. Considering the aforementioned circumstances, and the fact that essential witnesses are yet to be examined, it is likely that the conclusion of the trial would take a considerable amount of time.

19. In such circumstances, the Court must strike a balance between the fundamental right to a speedy trial, an integral aspect of the right to life and liberty under Article 21 of the Constitution of India, and the stringent requirements of Section 37 of the NDPS Act. While the rigours of Section 37 must be meticulously applied, they cannot override the constitutional mandate for timely justice.¹⁰ The right to life and personal liberty cannot be undermined by unwarranted delays in the judicial process, particularly when such delays are neither attributable to the accused nor adequately justified by the Prosecution with compelling reasons.

CONCLUSION

20. In view of the foregoing discussion, this Court is of the opinion that the Applicant has satisfied the statutory conditions for grant of bail on the grounds of absence of witnesses, clean antecedents and prolonged delay in



trial. The Applicant is, therefore, directed to be released 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/Link MM, on the following conditions:

- a. The Applicant shall not indulge in any criminal activity. He 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 Applicant shall cooperate in further investigation, if as and when directed by the concerned IO;
- c. The Applicant shall under no circumstance leave the country without the permission of the Trial Court;
- d. 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;
- e. The Applicant shall appear before the Trial Court as and when directed;
- 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. 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.
- h. In terms of the judgment of the Supreme Court in ***Frank Vitus v. Narcotics Control Bureau & Ors***,¹¹ the State shall immediately

¹⁰ Mohd. Muslim v. State (NCT of Delhi), 2023 SCC OnLine SC 352.

¹¹ 2025 INSC 30.



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.

21. Needless to state, any observations concerning the merits of the case are solely for the purpose of deciding the question of grant of bail and shall not be construed as an expression of opinion on the merits of the case.

22. A copy of the order be sent to the Jail Superintendent for information and necessary compliance.

23. The bail application is disposed of in the aforesaid terms.

SANJEEV NARULA, J

FEBRUARY 19, 2025

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