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

+ **BAIL APPLN. 3384/2024**

**SUSAN NJOKI**

.....Petitioner

Through: Mr. Meghan Paul, Advocate

versus

**STATE OF NCT OF DELHI**

.....Respondent

Through: Mr. Amit Ahlawat, APP for the State  
with SI Karambir Singh, PS Vijay  
Vihar

**CORAM:**

**HON'BLE MR. JUSTICE SANJEEV NARULA**

**ORDER**

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**04.02.2025**

1. The present application filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023<sup>1</sup> (erstwhile Section 439 of the Code of Criminal Procedure, 1973<sup>2</sup>) seeks regular bail in relation to FIR No. 192/2024 registered under Section 21, 61 and 85 of the Narcotic Drugs and Psychotropic Substances Act, 1985<sup>3</sup>, registered at P.S. Vijay Vihar. A chargesheet has been filed against the Applicant and charges have been framed *qua* her under Section 21(b) read with Section 29 of the NDPS Act as well as Section 14 of the Foreigners Act, 1946<sup>4</sup>.

2. Briefly, the case of the prosecution is as follows:

2.1 On 30<sup>th</sup> April, 2024, a Nigerian national, Victor Somtoo was apprehended by a team of Anti-Narcotics Squad, Rohini District while they

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<sup>1</sup> "BNSS"

<sup>2</sup> "CrPC."

<sup>3</sup> "NDPS Act"



were on routine patrolling duty. A small white plastic polythene was recovered from his right-hand fist. Upon inspection, it was discovered that the white plastic polythene contained a narcotic substance - Cocaine. The weight of the recovered substance was found to be 3.13 grams. Thereafter, the recovered substance was taken into police possession. At the time of apprehension, the co-accused Victor Somtoo disclosed that he had come to Rohini to deliver the Cocaine pouch to a person named Md. Arif, under the instructions of his superior, Ms. Susan Njoki—the Applicant.

2.2 Accordingly, FIR No. 192/2024, was registered at P.S. Vijay Vihar and the co-accused Victor Somtoo was arrested. Compliance of Section 50 NDPS Act was also duly done.

2.3 During the police custody remand, Victor Somtoo, provided the mobile number of the Applicant and stated that she met him weekly at various locations across Delhi to supply him with 30-40 small packets of Cocaine. He further revealed that upon receiving an order from a customer, the Applicant would send him the vehicle number and location of the intended recipient *via* WhatsApp. Acting on these instructions, he would then proceed to deliver the illicit substance to the designated customer.

2.4 On the basis of this information, on 3<sup>rd</sup> May, 2024, a raid was conducted at the apartment of the Applicant in Gurugram, leading to her arrest.

2.5 In her subsequent disclosure statement, the Applicant admitted to be involved in the illegal supply of Cocaine and to hiring co-accused Victor Somtoo as a delivery agent. She further stated that she conducted her operations using a specific mobile number (xxxxxxx95), through which

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<sup>4</sup> “Foreigners Act”



customers would place orders for the narcotic substance *via* WhatsApp messages or telephonic calls. Upon receiving an order, payments were made either through a Paytm account linked to the aforementioned number or directly into her Standard Chartered Bank account. Once the payment was confirmed, the Applicant would instruct co-accused Victor Somtoo to deliver the Cocaine to the respective customers. Additionally, she disclosed that she sourced the Cocaine in large quantities from a Nigerian national, identified as Toiti @ Etocas.

2.6 On the basis of the disclosure statement, the Applicant was taken into police custody on 4<sup>th</sup> May, 2024, for one day, to facilitate the apprehension of the primary supplier of the illicit drug trade and to recover the mobile phone allegedly used by her to operate the Cocaine distribution network. However, during her police custody remand, she did not cooperate with the investigation and deliberately attempted to mislead and delay the process.

2.7 During the course of investigation, proceedings under Section 52A of NDPS Act were conducted and the sealed exhibit, containing samples of the substance recovered from the co-accused – Victor Somtoo, was sent to the FSL for analysis. As per the FSL report, the seized substance tested positive for Cocaine.

2.8 Further, an analysis of Call Detail Records<sup>5</sup> of the mobile numbers used by both the co-accused, Victor Somtoo, and the Applicant revealed that they were in regular contact. The CAF of the mobile number used by the Applicant was found to be registered under her own name and it was registered on the address of the apartment in Gurugram where she was arrested.



2.9 As per the KYC details of the Paytm account linked to the Applicant's mobile number, she was identified as the registered account holder. Upon analysing the transaction history of this Paytm account, it was discovered that over ₹68 lakhs had been credited from multiple UPI IDs. Further scrutiny revealed that several of names appearing in these UPI transactions matched the individuals disclosed by the Applicant and co-accused Victor Somtoo in their respective disclosure statements. The Applicant failed to provide any legitimate business rationale or alternative explanation for these transactions.

2.10 Thereafter, while investigating the flow of money, the Applicant's bank account details including the KYC details were procured from Standard Chartered Bank. These records confirmed that the Applicant was the registered account holder, and the address linked to the account matched the apartment in Gurugram where she was apprehended. An analysis of the bank statements revealed that between 1<sup>st</sup> June, 2022, and 23<sup>rd</sup> July, 2024, a total amount of ₹90.62 lakhs had been credited to the Applicant's account from various UPI IDs. A distinct pattern emerged, with most credit entries being of ₹8,500 or multiples thereof, suggesting that these were payments made by customers for purchasing Cocaine.

2.11 Moreover, it was also found that the Victor Somtoo had deposited ₹8,64,000 in cash into the Applicant's bank account through multiple transactions, the most recent being a ₹3 lakh deposit on 6<sup>th</sup> March, 2024. The records also indicate that the Applicant herself had deposited a total of ₹27,97,800 in cash, into her bank account, between 1<sup>st</sup> June, 2022, and 23<sup>rd</sup> July, 2024.

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<sup>5</sup> "CDR"



2.12 The analysis of the bank account statements clearly indicates that the Applicant either received money from her customers in cash or through UPI transactions. It can also be inferred that the cash collected by Victor Somtoo while delivering the Cocaine pouches, was either handed over to the Applicant in person or deposited in her bank account by him.

2.13 Subsequently, another accused, Md. Arif, whose details were disclosed by Victor Somtoo at the time of his arrest, was also arrested. The CDR analysis of his mobile number revealed that the Applicant was in regular contact with him. Further, it was also found that the co-accused Md. Arif also transferred money to the Applicant's Paytm account on multiple occasions. During his interrogation, co-accused Md. Arif disclosed that he purchased Cocaine from the Applicant and further supplied it in Rohini, Sultanpuri area of Delhi. Upon analysing the bank accounts maintained by Md. Arif, it was revealed that ₹74.22 lakhs had been credited within a period of just six months, further corroborating his involvement in large-scale drug distribution, with payments received online from customers.

2.14 Since both the Applicant and the accused Victor Somtoo are foreigners, a reply was sought from the Foreigners Regional Registration Offices, as per which, no travel history or valid documentation was found for either of them, indicating that they have been illegally residing in India.

2.15 Thus, on finding sufficient grounds, charges under Section 27A of NDPS Act were added in the present matter and further investigation is still ongoing in relation to these chains of transactions.

2.16 Some of the co-accused persons whose names were disclosed by the Applicant and co-accused Victor Somtoo, including the main source of the Cocaine supply namely Toiti @ Etocas, are still at large and efforts are



being made to trace these active members of the syndicate and to apprehend the nexus involved in supply of Cocaine in the Delhi NCR region. Another co-accused named Sonu Arora was declared PO in the present case and is still at large.

3. Mr. Meghan Paul, counsel for the Applicant, contends that no contraband has been recovered from the direct possession of the Applicant, and the entire prosecution case against her hinges solely on the disclosure statement of co-accused Victor Somtoo. He submits that such disclosure, by itself, is inadmissible as substantive evidence, unless it is corroborated by independent material. Without prejudice to the above contention, he argues that the total contraband recovered in the present case is only 3.13 grams of Cocaine, which is only marginally above the small quantity threshold of 2 grams under the NDPS Act and, therefore, falls within the intermediate quantity category. Given the quantum of recovery, he submits that the rigors of Section 37 of the NDPS Act, which apply in cases involving commercial quantity, would not be applicable in the present case. He further submits that the Applicant is in the business of providing medical tourism services to foreign nationals and has been receiving payments from her clients. He asserts that the financial transactions flagged by the prosecution as indicative of illicit drug trade are, in fact, legitimate payments received from her clients for medical tourism services. He argues that there is no direct evidence linking these transactions to narcotics distribution, and the prosecution's inference in this regard is purely speculative. Lastly, he contends that the transfer of money between the co-accused and the Applicant was on 9<sup>th</sup> February, 2024 and 6<sup>th</sup> March, 2024, which is 55 days before the recovery was made against the co-accused Victor Somtoo and



there is no evidence of any chats or calls between the two at the relevant time.

4. Mr. Amit Ahlawat, APP for the State, strongly opposes the bail application and submits that investigation in the case has revealed that the Applicant is part of a drug syndicate and is supplying contraband to dealers in the Delhi NCR region. He submits that even though the analysis of the monetary transactions as shown in the Applicant's bank account is still ongoing, however, as of now, the regular transactions of cash deposits clearly reflect the transactions to be in relation to the supply of illicit drugs. He argues that while the Applicant's Paytm account details reveal that INR 68 Lakhs was credited into her account from multiple UPI IDs, the details of the Standard Chartered Bank account of the Applicant reveals that a total amount of ₹90.62 Lakhs was credited to her from multiple UPI IDs. The said amounts were credited within the period from 01<sup>st</sup> June, 2022 to 23<sup>rd</sup> July, 2024. Co-accused Victor Somtoo has also disclosed that he had deposited substantial amounts of cash in the Standard Chartered bank account of the Applicant. The said Standard Chartered bank account of the Applicant has been frozen under the directions of the Investigating Officer<sup>6</sup>.

5. Mr. Ahlawat, points out that as per the disclosure statement of the Applicant, she has admitted that she sells one shot of Cocaine for ₹8000 to 9500 to the customers. Thus, the analysis of the Paytm account and Standard Chartered bank account statement, which reveal multiple transactions of the peculiar sum of ₹8500 and its multiples being credited into the Applicant's account, establishes that the Applicant is running a nexus of Cocaine supply in Delhi NCR. Moreover, the CDR analysis also indicates that the Applicant



was in regular contact with the other co-accused person Victor Somtoo from whom the recovery of contraband substance was affected. In fact, there were more than 324 incoming and outgoing calls made between the two, within a period of one year. In their disclosure statement, the co-accused Victor Somtoo and the Applicant have further named more than 20 persons who used to purchase Cocaine on regular basis and investigation into the larger drug trafficking ring is ongoing.

6. The Court has considered the aforementioned contentions. It is noted that the Applicant has been in custody since 03<sup>rd</sup> May, 2024 – i.e., for approximately 9 months. While further investigation in the case is ongoing, a chargesheet has been filed in the present case on 25<sup>th</sup> June, 2024 and charges have also been framed *qua* the Applicant on 9<sup>th</sup> August, 2024 only under Section 21(b) read with Section 29 of the NDPS Act and Section 14 of the Foreigners Act. However, the trial of the case is yet to commence, and the prosecution has cited more than 19 witnesses. Therefore, the conclusion of the trial is likely to take some time.

7. The Court also takes note of the financial transactions linked to the Applicant, which allegedly reflect substantial deposits in her bank and Paytm accounts, purportedly linked to drug-related transactions. In this regard, while the prosecution contends that investigation under Section 27A of the NDPS is ongoing, however, as of now, no additional chargesheet has been filed against the Applicant, nor has any formal charge been framed under Section 27A NDPS. Most crucially, there is no direct recovery of contraband from the Applicant. The only recovery made is from the co-accused, Victor Somtoo, and the quantity recovered is allegedly 3.13 grams

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<sup>6</sup> “IO”



of Cocaine, which falls within the category of “intermediate” quantity under the NDPS Act. As such, at this stage, the rigours of Section 37 of the NDPS Act do not apply to the Applicant. The prosecution’s case against the Applicant primarily hinges on financial transactions that are allegedly suspicious and the disclosure statement of the co-accused. The veracity and evidentiary value of these statements, as well as the nature of the transactions, will have to be scrutinized during trial and after the conclusion of further investigation.

8. Furthermore, the prosecution’s case heavily relies on the disclosure statement of the co-accused, Victor Somtoo and her own statement. It is well settled that a disclosure statement under Section 27 of the Indian Evidence Act is admissible only to the extent that it leads to the discovery of a relevant fact and cannot, by itself, be the sole basis of conviction. In the present case, no recoveries were made from the Applicant, and the transactions relied upon by the prosecution remain subject to further scrutiny at trial. Sole reliance on the co-accused’s statement, without independent corroboration, cannot justify prolonged incarceration at this stage.

9. Since the rigours of Section 37 NDPS do not apply, the Court would rely on catena of judgments by the Supreme Court that hold that the object of granting bail is neither punitive nor preventative. The primary aim sought to be achieved by bail is to secure the attendance of the accused person at the trial<sup>7</sup>. Considering the overall facts noted above and the fact that “intermediate” quantity of contraband recovered from the co-accused and not directly from the Applicant and further considering that she has been in

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<sup>7</sup> See also: *Sanjay Chandra v. CBI*, (2012) 1 SCC 40; *Satender Kumar Antil v. Central Bureau of Investigation*, (2022) 10 SCC 51.



custody for approximately 9 months, the Court is inclined to allow the Applicant's request made in the present application for grant of bail.

10. The Applicant is, therefore, directed to be released on bail on furnishing a personal bond for a sum of ₹50,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court, on the following conditions:

- a. The Applicant shall fully 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 NCT of Delhi without informing the IO of her intended travel, along with an itinerary;
- d. The Applicant shall under no circumstance leave the country without the prior permission of the Trial Court;
- e. The Applicant shall appear before the Trial Court as and when directed;
- f. The Applicant shall provide the address where she would be residing after her release and shall not change the address without informing the concerned IO/ SHO;
- g. The Applicant shall, upon her release, give her mobile number to the concerned IO/SHO and shall keep her mobile phone switched on at all times.
- h. The Applicant shall report to the concerned IO on every Monday at 4:00PM and shall not be kept waiting for more than one hour for this purpose.



i. The State or prosecuting agency, as the case may be, shall immediately communicate the present order granting bail, to the concerned Foreigners Registration Officer appointed under Rule 3 of the Registration of Foreigners Rules, 1992. The concerned Foreigners Registration Officer shall, in turn, communicate the order to all concerned authorities so as to enable the authorities under the Foreigners Act, 1946 the Registration of Foreigners Rules, 1992 and the Foreigners Order, 1948 to take appropriate steps, if any, in accordance with law.

11. 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.

12. 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.

13. The bail application is allowed in the afore-mentioned terms.

**SANJEEV NARULA, J**

**FEBRUARY 4, 2025/ab**