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

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Date of Decision: 03.03.2025+ **BAIL APPLN. 3543/2024, Crl. M.A. Nos.29644/2024 & 34718/2024****URUKAPA AHMED @ BABADON @ WILLIAM****@ JOSEPH****.....Petitioner**Through: Mr. Chetan Bhardwaj, Ms
Priyal Bhardwaj and Mr.
Dhanush Kumar, Advocates

versus

STATE NCT OF DELHI**.....Respondent**Through: Mr. Manoj Pant, APP for the
State for the State**CORAM:****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J. (ORAL)**

1. The present bail application has been filed on behalf of the applicant, seeking grant of regular bail in case arising out of FIR No. 146/2021, registered at Police Station Crime Branch, Delhi, for offences punishable under Sections 21/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 [hereafter '*NDPS Act*'] and Section 14 of the Foreigners Act, 1946.

2. Briefly stated, the facts of the case are that on 29.07.2021, ASI Sanjay Kumar, posted at office of SOS-I, Crime Branch, Prashant Vihar, had received a secret information that one African citizen,



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who introduces himself as William, used to supply narcotic substance i.e. Heroin in Delhi NCR, and he could be apprehended at about 4 PM in Uttam Nagar area, where he would come to deliver a consignment of Heroin. Pursuant to same, a raiding team was constituted and the same had reached Uttam Nagar, near metro pillar number 768, at about 3:30 PM. It is alleged that at about 5:30 PM, one person had come on a scooty and taken out a packet from its boot, and handed over the same to another person, who had kept the same in his pant's pocket. The person who had received the said packet was identified as William by the secret informer. The police party had then apprehended both the accused persons. William had disclosed his name as Uruakpa Ahmed @ Babadon @ William @ Joseph and the person who had handed over the packet to him had disclosed his name as Frank @ Michael. After complying with the mandatory provisions of NDPS Act, including serving a notice under Section 50 of NDPS Act upon the accused persons, their personal search was conducted. 320 grams of Heroin was recovered from the possession of present applicant Uruakpa Ahmed, and 310 grams of Heroin was recovered from the possession of co-accused Frank. The said substances had been tested using the NDPS Field Testing Kit. Eventually, the accused persons were arrested and present FIR was registered.

3. The learned counsel appearing for the present accused/applicant submits that the applicant has been falsely implicated in the present case, and he is a victim at the hands of the



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investigating agency as they have fabricated the case and falsely implicated him merely because he is a foreign national. It is submitted that the applicant has undergone more than 3 years and 6 months in judicial custody and only 1 witness has been examined out of 21 witnesses. It is further contended that since the trial is not going to be concluded soon, the incarceration of the applicant due to delay in trial clearly violates Article 21 of the Constitution of India. It is also submitted that the compliance of notice under Section 50 of the NDPS Act has not been made as the word 'nearest' has not been mentioned in the notice served upon the applicant. It is thus prayed that the applicant be granted regular bail.

4. On the other hand, the learned APP for the State argues that the applicant herein was arrested after complying with all the mandatory provisions of the NDPS Act. It is contended that commercial quantity of narcotic substance i.e. Heroin, each, was recovered from the possession of the present applicant as well as the co-accused. The learned APP for the State further submits that the applicant was actively involved in the distribution and sale of narcotic substances in collaboration with other co-accused persons, and the same is also evident from his previous involvements of similar nature. It is argued that given the nature of the offence and the commercial quantity of contraband involved, the stringent provisions of Section 37 of the NDPS Act would apply. In light of these submissions, it is prayed on behalf of the State that the present bail application be dismissed.



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5. This Court has **heard** arguments addressed on behalf of both the parties, and has perused the material placed on record by either side.

6. In the case at hand, the applicant herein was apprehended with commercial quantity of narcotic substance i.e 320 grams of Heroin, at the spot by the raiding team. The co-accused Frank was also apprehended with commercial quantity of Heroin i.e. 310 grams. Concededly, the alleged recovery made from the applicant is commercial quantity and therefore, bar under Section 37 of the NDPS Act would be attracted. Therefore, the twin conditions under Section 37 of the NDPS Act will have to be satisfied by the applicant so as to entitle him to grant of bail. The said twin conditions are : *first*, that the accused is not guilty of the offence, and *second*, that he is unlikely to commit a similar offence if released on bail. For reference, Section 37 of the NDPS Act is set out below:

“37. Offences to be cognizable and non-bailable.

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) -

a) every offence punishable under this Act shall be cognizable;

b) no person accused of an offence punishable for offences under section 9 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are



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reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.”

7. The Hon'ble Supreme Court in *Narcotics Control Bureau v. Mohit Aggarwal*: 2022 SCC Online SC 891, while explaining the meaning of 'reasonable grounds' under Section 37(1)(b) of NDPS Act, has held as under:

“14. To sum up, the expression "reasonable grounds" used in clause (b) of Sub-Section (1) of Section 37 would mean credible, plausible and grounds for the Court to believe that the accused person is not guilty of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offence. Dove-tailed with the aforesaid satisfaction is an additional consideration that the accused person is unlikely to commit any offence while on bail.

8. In the case of *Union of India v. Prateek Shukla*: (2021) 5 SCC 430 as well as *State v. Lokesh Chadha*: (2021) 5 SCC 724, it was held by the Hon'ble Supreme Court that the provisions of Section 37 of NDPS Act have to be applied strictly at the time of deciding bail application of an accused.

9. As evident from the chargesheet placed on record, the applicant herein was arrested at the spot, pursuant to receipt of secret



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information, and recovery of commercial quantity of Heroin was affected from him. The FSL report supports the case of prosecution, since the exhibits were found containing 'Diacetylmorphine', 'Acetaminophen', 'Caffeine', 'Dextromethorphan', 'Acetylcodeine', and 'Monoacetylmorphine'.

10. Further, as per prosecution, all mandatory provisions of the NDPS Act were complied with at the time of search and arrest of the applicant. Insofar as the argument of the learned counsel for the applicant regarding some discrepancies in notice under Section 50 of NDPS Act is concerned, this Court is of the view that the same is a matter of trial [as held by the Hon'ble Supreme Court in *Vijaysinh Chandubha Jadeja v. State of Gujarat: (2011) 1 SCC 609*], and cannot be a ground for bail, especially when the recovery of commercial quantity of narcotic substance was affected from him. Similarly, the argument regarding delay of a few days in forwarding the samples of seized Heroin to the FSL and there being violation of Section 52A of the NDPS Act also cannot be a ground for grant of regular bail, as held by the Hon'ble Supreme Court in *Narcotics Control Bureau v. Kashif: 2024 SCC OnLine SC 3848*. Therefore, at this stage, there is no reasonable ground to believe that the applicant has not committed the offence in question, for the purpose of satisfaction of first condition under Section 37 of NDPS Act.

11. Insofar as the second condition under Section 37 of NDPS Act is concerned, this Court's attention has been drawn to the fact that applicant herein has previous involvement in two other FIRs of



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similar nature, registered for offences under Sections 21/29 of NDPS Act, at P.S. Special Cell i.e FIR No. 39/2009 and FIR No. 45/2015. Thus, there is no ground to believe that the applicant will not commit a similar offence again, if he is released on bail. Therefore, the applicant clearly fails to fulfil the twin conditions under Section 37 of NDPS Act.

12. It is also material to note that the applicant is a Nigerian national and he could not produce any valid Passport or Visa after he was apprehended by the investigating agency, and accordingly, Section 14 of the Foreigners Act was also invoked in the present case. Further, co-accused Frank, who was granted interim bail on medical grounds on 25.04.2022, had misused the liberty and had absconded, and proceedings against him had been initiated under Section 82 of Cr.P.C.

13. In view of the foregoing discussion, this Court is not inclined to grant regular bail to the applicant at this stage.

14. However, the learned Trial Court is directed to expedite the recording of evidence in this case, since the applicant has been in judicial custody for more than three and half years.

15. With above directions, the present bail application is dismissed. Pending applications also stand disposed of.

16. Nothing expressed hereinabove shall tantamount to an expression of opinion on the merits of the case.

17. A copy of this order be forwarded to the concerned Trial Court



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for information.

18. The order be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

MARCH 3, 2025/A