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

+ **BAIL APPLN. 3570/2025 & CRL.M.A. 28069/2025**

OBIORA TONY OKEKE ALIAS FRIDAY ALIAS OBIEFOKA

FRIDAY

.....Petitioner

Through: Ms. Mamta Wadhwa, Mr. Sanju,
Advocates.

versus

NARCOTICS CONTROL BUREAU

.....Respondent

Through: Mr. Arun Khatri, SSC with Ms.
Anoushka Bhalla, Ms. Tracy
Sebastian, Advocates

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

18.11.2025

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1. This application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹ (corresponding to Section 439 of the Code of Criminal Procedure, 1973²) seeks regular bail in the proceedings arising from Case No. VIII/34/DZU/2019 registered under Sections 21, 23 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985³ at P.S. NCB, DZU, R.K. Puram, New Delhi.

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

2.1. On 03rd September, 2019, at around 05:30 AM, the Intelligence

¹ "BNSS"

² "CrPC"

³ "NDPS Act"



Officer, NCB/DZU, received information that one U.S. citizen, Fournier Richard Walter, was staying at Hotel SRV, Mahipalpur, New Delhi, and was suspected to be in possession of 'Cocaine'. This information was communicated to the Superintendent, NCB/DZU. Pursuant to the directions received, an NCB team proceeded to the said hotel, where Walter was intercepted in Room No. 501. A search of his baggage resulted in the recovery and seizure of 4.200 kilograms of 'Cocaine', which constitutes a commercial quantity. During inquiry, Walter tendered a voluntary statement under Section 67 NDPS Act, admitting his involvement and disclosing that the contraband had been handed over to him by an agent of one Dennis John Holman at Quito, Ecuador, and that he had been instructed to deliver the same to another agent of Holman at IGI Airport, New Delhi. He further stated that, having failed to meet the said agent on the scheduled date, he checked into the hotel and that a fresh meeting had been fixed for 4th September 2019 at IGI Airport.

2.2. Based on Walter's disclosure, an NCB surveillance team was deployed at IGI Airport on 04th September, 2019. During surveillance, the present Applicant was allegedly seen approaching Walter to collect the baggage containing the contraband, whereupon he was apprehended. On checking the Applicant's mobile phone, a photograph of Walter was found stored therein. During interrogation, the Applicant tendered a voluntary statement, admitting that he was working for Holman and that he had arranged the air ticket for Walter. He further admitted that he had visited IGI Airport on 3rd September, 2019, to receive the consignment, but having failed to do so, he returned on 4th September, 2019, as directed by Holman.



2.3. The material collected during the investigation establishes that Walter, Holman and the Applicant are members of an international organised syndicate engaged in the illegal trafficking of narcotic substances. In furtherance of the criminal conspiracy, the commercial quantity of 4.2 KG of 'Cocaine' was imported into India by Walter on the instructions of Holman and was to be taken delivery of by the Applicant, who was accordingly arrested on 04th September, 2019.

3. Ms. Mamta Wadhwa, counsel for the Applicant, submits that the Applicant has remained in custody for over six years. In view of the principles laid down by the Supreme Court in *Rabi Prakash v. State of India*⁴ and *Sanjay Chandra v. CBI*⁵, such prolonged incarceration coupled with slow progress of trial constitutes a compelling ground for bail. At this stage, only 7 out of 16 prosecution witnesses have been examined, and the trial is likely to take considerable time to conclude. There is no recovery of contraband from the possession of the Applicant, and that his implication rests solely on disclosure statements and certain circumstantial links, such as alleged association with co-accused and call records, the evidentiary worth of which will have to be tested during trial. It is argued that, at this stage, such material does not justify the continued deprivation of liberty for an open-ended period. Emphasis is also laid on the fact that the Applicant had previously been implicated in Case No. VIII/11/DZU/2016/2046, where 14.250 kilograms of 'Methaqualone' were allegedly recovered from the baggage of a South African national, Belinda Fourier. The Applicant was arrayed as an accused in that case solely on the basis of her disclosure that

⁴ SLP (Crl.) No. 4169/2023.

⁵ (2012) 1 SCC 40.



she was staying with him. However, in those proceedings, the Applicant was later discharged. Counsel submits that this history indicates a pattern of over-implication based on tenuous disclosures rather than substantive incriminating material. In these circumstances, it is urged that, having regard to the length of custody already undergone, the absence of any direct recovery from the Applicant, and the largely circumstantial nature of the material against him, the Applicant has made out a case to be enlarged on regular bail pending trial.

4. On the other hand, Mr. Arun Khatri, SSC for NCB, opposes the application and submits that the Applicant stands charged of an offence involving a commercial quantity of contraband, thereby attracting the rigours of Section 37 of the NDPS Act. It is contended that although the initial recovery of 4.2 kilograms of ‘cocaine’ was effected from co-accused Walter, his voluntary statement under Section 67 of the NDPS Act clearly discloses the role of the Applicant as the intended recipient of the consignment, acting on the instructions of one Dennis John Holman, who is alleged to be running an international narcotics trafficking syndicate. He submits that, pursuant to the disclosure made by Walter, the NCB surveillance team apprehended the Applicant at IGI Airport on 4th September, 2019, when he approached Walter to collect the baggage in question. From the Applicant’s mobile phone, a photograph of Walter was recovered, thereby corroborating their prior association. The Applicant’s voluntary statement, recorded under Section 67 NDPS Act, establishes his connection with Holman, his role in arranging the air ticket for Walter, and his visits to IGI Airport for the purpose of taking delivery of the contraband. On the strength of this material, it is argued that the investigation has



unearthed a well-coordinated criminal conspiracy wherein the Applicant was an active participant in the trafficking of a substantial commercial quantity of narcotic drugs. Having regard to the seriousness of the allegations, the nature of the role attributed to the Applicant, and the stringent mandate of Section 37 NDPS Act, it is submitted that the twin conditions for grant of bail are not satisfied. It is further urged that, if released, the Applicant poses a significant risk of absconding, rejoining the syndicate, or interfering with witnesses and the fair conduct of the trial.

Analysis

5. The Court has considered the rival submissions and perused the material on record. Before turning to the facts, it is useful to recall the principles laid down by the Supreme Court in ***Mohd. Muslim v. State (NCT of Delhi)***⁶, on the manner in which Section 37 of the NDPS Act is to be applied at the stage of bail:

*“21. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, **the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.**”*

22. The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused’s guilt may be proved. The judgments of this court have, therefore, emphasized that the satisfaction which courts are expected to record, i.e., that the accused may not be guilty, is only prima facie, based on a reasonable reading, which does not call for

⁶ (2023) 18 SCC 166.



meticulous examination of the materials collected during investigation (as held in Union of India v. Rattan Malik¹⁹). Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (ref. Satender Kumar Antil supra). Having regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail.”

[Emphasis Supplied]

6. The Court is required only to make a *prima facie* assessment of whether the material on record meets the threshold of Section 37 NDPS Act. In the present case, no recovery has been affected from the Applicant. The prosecution seeks to implicate him for conspiracy under Section 29 based on: (i) a photograph of Walter found in the Applicant’s mobile phone; (ii) Walter’s disclosure that the baggage containing 4.2 kg of ‘Cocaine’ was to be handed over to an agent at IGI Airport; and (iii) the Applicant’s own alleged disclosure under Section 67.

7. In *Toofan Singh v. State of Tamil Nadu*⁷, the Supreme Court has held that confessional statements recorded under Section 67 NDPS Act are inadmissible as confessions in the trial of an offence under the Act, in the absence of any corroborative evidence. The prosecution material, such as the photograph on the Applicant’s phone and his own Section 67 statement, the admissibility and weight of which will have to be tested at trial in light of *Toofan Singh*. Whether these circumstances, individually or cumulatively, establish the Applicant’s knowledge of the contraband, possession in the extended sense of dominion and control, or a coordinating role in the importation of the commercial quantity seized from Walter, is a matter that can only be determined after evidence is led and subjected to cross-examination. At this stage, the material does not persuade the Court that the



embargo under Section 37 is attracted to such an extent that bail must necessarily be denied.

8. There is also a significant aspect of liberty and delay in trial. As emphasised by the Supreme Court in *Mohd. Muslim*, the rigours of Section 37 cannot override the constitutional guarantee of a speedy trial under Article 21 of the Constitution. Although the trial is underway, only 7 of 16 prosecution witnesses have been examined thus far. As per the Nominal Roll as on 20th October, 2025, the Applicant has undergone 6 years, 1 month, and 17 days of incarceration, with a satisfactory conduct in the past year. The delay in the trial is not solely attributable to the Applicant. This Court in *Lali v. State (NCT of Delhi)*⁸, relying upon the judgments of the Supreme Court in *Dheeraj Kumar Shukla v State of U.P.*⁹ and *Mohd. Muslim* has reaffirmed that undue delay in trial is an independent ground for grant of bail, and such relief is not constrained by the rigour of Section 37 NDPS Act.

9. Considering the nature of evidence relied upon by the prosecution, the absence of recovery from the Applicant, the fact that the prosecution seeks to connect him only through disclosures and circumstantial material whose probative value must be tested during trial, the substantial period of incarceration already undergone, and the likelihood of further delay in conclusion of trial, in the opinion of the Court, the present case is a fit case for enlarging the Applicant on bail. Further incarceration of the Applicant will serve no meaningful purpose.

10. The Applicant is, therefore, directed to be released on bail on

⁷ 2021 (4) SCC 1.

⁸ Bail Appln. 2507/2024, decided on 20th February, 2025.



furnishing a personal bond for a sum of INR 25,000/- with one surety of the like amount, subject to the satisfaction of the Trial Court/Duty MM, on the following conditions:

- a. The Applicant shall 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 country without the permission of the Trial Court;
- d. The Applicant shall appear before the Trial Court as and when directed;
- e. 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;
- 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. The Applicant shall report to the concerned P.S. on the first Friday of each month. However, it is made clear that the Applicant shall not be made to wait for more than an hour.
- h. In terms of the judgment of the Supreme Court in ***Frank Vitus v. Narcotics Control Bureau & Ors***,¹⁰ the State shall immediately communicate the order granting bail, to the concerned Registration Officer appointed under Rule 3 of the Registration of Foreigners Rules, 1992, who

⁹ 2023 SCC OnLine SC 918.

¹⁰ BAIL APPLN. 4187/2020.



in turn, shall communicate the order to all concerned authorities including civil authorities.

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 and disposed of along with any pending application(s).

SANJEEV NARULA, J

NOVEMBER 18, 2025/ab