



\$~9

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 3906/2024**

ZENITH UGWU @ JENNIFER ODIH @ BLISSPetitioner

Through: Mr. Anup Kr. Das, Mr. Uday
Chauhan and Ms. Aayushi Gupta,
Advocates.

versus

NARCOTICS CONTROL BUREAURespondent

Through: Mr. Arun Khatri, SSC with Ms.
Shelly Dixit, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **08.07.2025**

1. The present application filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹ (formerly Section 439 of the Code of Criminal Procedure, 1973²) seeks regular bail in the proceedings arising from Crime No. VIII/82/DZU/2021 registered under Sections 8, 21(c), 22(c), 25 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985³ at P.S. Narcotics Control Bureau.

Prosecution's Case

2. Briefly stated, the case of the Prosecution is as follows:

2.1 On 23rd November, 2021, acting on confidential information received by SI Subhash Chand of the Anti-Narcotic Cell, Dwarka, an individual of African origin, namely George Uchenna, was apprehended in an open area

¹ "BNSS"

² "Cr.P.C."

³ "NDPS Act"



near the corner of Ganda Nala Road, Lal Farm, A-2 Block, Bhagwati Garden. His search led to the recovery of 270 grams of Heroin from a packet found in his pocket, pursuant to which he was arrested.

2.2 In his disclosure statement, George Uchenna admitted to the recovery of the contraband from his possession and stated that it had been supplied to him by one Gilbert Apeh Emeka. Based on further reliable information received by the Investigating Agency, Emeka was apprehended on 25th January, 2022.

2.3 In his statement, Emeka confessed to his involvement in drug trafficking and acknowledged his association with George Uchenna. A search of Emeka's residence yielded no narcotic substances. However, two tenant verification forms, one in the name of Emeka and the other in the name of Zenith Ugwu @ Jennifer Odih @ Bliss (the Applicant), were recovered and seized. Emeka revealed that, on instructions from Jude Onydikachi Onoyima, he collected consignments of narcotic substances from Jude's associates. He further stated that he was accompanied by his girlfriend, the Applicant, during these collections. Emeka also disclosed that narcotic substances were stored in a rented property taken in the name of the Applicant.

2.4 On 26th January 2022, acting upon Emeka's disclosure, a search was conducted at the aforesaid premises, which was taken on rent in the Applicant's name. This search resulted in the seizure of 2.250 kilograms of Heroin and 500 grams of Methamphetamine. It is alleged that the landlord had informed the Applicant about the impending search, however she fled, and did not return to the premises.

2.5 During the course of further investigation, on the basis of reliable



information, the Applicant was intercepted on 25th April, 2022 from the 3rd floor of WZ-11, Gali No. 14, Guru Nanak Nagar, Tilak Nagar, and notice under Section 67 NDPS Act was served upon her. In her statement, the Applicant disclosed that Emeka was financially supporting her, including paying her rent, and that she accompanied him while collecting drug consignments. She further admitted that she was aware of the contraband being stored in her rented accommodation and acknowledged her involvement in the present case. Consequently, she was arrested on the same day.

2.6 It is pertinent to note that a previous bail application filed by the Applicant was dismissed by the ASJ/Special Judge, NDPS, Patiala House Courts, New Delhi, by order dated 11th September, 2024.

Applicant's Case

3. In the above backdrop, counsel for the Applicant makes the following submissions, seeking grant of bail:

3.1. The Applicant has been in judicial custody for nearly three years and three months. Despite such an extended period of incarceration, the trial has not progressed beyond the stage of framing of charges. To date, none of the 18 prosecution witnesses have been examined. This prolonged pre-trial incarceration amounts to punitive detention, and is violative of the Applicant's fundamental right to life and personal liberty as guaranteed under Article 21 of the Constitution of India.

3.2. The main accused, Gilbert Apeh Emeka, has already been granted regular bail by this Court *vide* order dated 3rd April, 2024 in BAIL APPL. 3269/2023. Thus, the Applicant is entitled to bail on the principle of parity.

3.3. The Investigating Officer failed to conduct videography of the



location from where the alleged contrabands were recovered, which is a crucial safeguard to substantiate the Prosecution's case. The absence of any independent witness at the time of the recovery further casts a serious doubt on the credibility of the alleged seizure.

3.4. The alleged rent verification form was misused by co-accused Emeka. The Applicant and Emeka were residing separately and at different addresses. The recovery of the rent verification form bearing the Applicant's name from Emeka's residence, rather than from the alleged rented premises, indicates a lack of direct connection between the Applicant and the contraband recovered from the rented property.

3.5. The seized contraband remained in the custody of the NCB for a period of 36 days. In the absence of any videographic or photographic documentation of the recovery, the possibility of tampering with the substance during this period cannot be ruled out.

3.6. The Applicant has a clear past record, with no antecedents to her credit. She undertakes to comply with all conditions that may be imposed by this Court at the time of granting bail.

Respondent's Case

4. On the other hand, Mr. Arun Khatri, SSC for the State, strongly opposes the present bail application. He contends that the contraband recovered from the Applicant includes 2.250 kg of Heroin and 500 grams of Methamphetamine, which qualifies as commercial quantity. Therefore, the Applicant is required to meet the twin conditions prescribed under Section 37 of the NDPS Act. He further argues that there is ample evidence on record to implicate the Applicant, particularly the recovery of the contrabands from her rented premises. Given the serious nature of the



offence, he submits that the Court should not grant bail to the Applicant.

Analysis

5. The Court has carefully considered the submissions advanced by both sides. It is well established through catena of judgments by the Supreme Court 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.⁴ However, since the contraband recovered from the Applicant clearly falls within the prescribed commercial quantity, the rigours of Section 37 of the NDPS Act are squarely attracted.

The IO failed to video-graph the location from where the alleged contrabands were recovered

6. The material implicating the Applicant herein is the contraband allegedly recovered from the premises rented in her name. However, it is not in dispute that the Applicant was not present during the said recovery and further asserts that no independent witness was present during the search. In the given circumstances, the videographic documentation of the place of search/seizure assumes considerable importance. The Supreme Court has consistently reiterated the significance of video recording the recovery process especially in cases involving commercial quantities of narcotic substances.⁵ Specifically, reliance is placed on the judgement of this court in ***Gopal Dangi Vs State (NCT of Delhi)***,⁶ wherein the imperative of conducting videography at the spot has been duly underscored.

7. It is not the case of the Prosecution that the requisite equipment for video-graphing or photographing the search was unavailable. In fact, it is a

⁴ Sanjay Chandra v. CBI, (2012) 1 SCC 40; Satender Kumar Antil v. Central Bureau of Investigation, (2022) 10 SCC 51.

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



matter of common knowledge that, in today's time, almost every individual possesses a smartphone equipped with a camera. While it is true that any effort made by the Prosecution to conduct the search in the presence of independent witnesses and to video-graph the spot will ultimately be assessed during the course of trial, and such omission may not necessarily be fatal to the Prosecution's case, nevertheless, at this stage, the benefit of such lapse cannot be denied to the Applicant.

Delay in Trial

8. What also weighs upon the mind of this Court is the Applicant's fundamental right to a speedy and expeditious trial, which must be accorded due consideration. This right functions as a vital safeguard against unjust and prolonged incarceration, ensuring that the judicial process does not, in effect, impose punishment prior to a finding of guilt. The right to a speedy trial, now firmly entrenched in our constitutional jurisprudence under Article 21 of the Constitution of India, is not an abstract or illusory safeguard. It is a vital facet of the right to personal liberty, that is extended even to non-citizens, cannot be whittled down merely because the case arises under a special statute such as the NDPS Act.

9. The Supreme Court has consistently held that where trials under special laws are unduly delayed, the rigour of stringent bail provisions must yield to the constitutional promise of liberty. The more rigorous the provisions of the legislation, the more expeditious the adjudication must be.⁷

10. In this context, the observations in the recent decision of ***Mohd. Muslim v. State (NCT of Delhi)***⁸ are apposite, where the Supreme Court,

⁶ 2024 SCC OnLineDel 4825

⁷ Satender Kumar Antil v. Central Bureau of Investigation, (2022) 10 SCC 51.

⁸ (2023) 18 SCC 166.



while dealing with Section 37 of the NDPS Act, held that protracted incarceration as an undertrial, even in cases involving serious offences, must weigh heavily in favour of granting bail, particularly when such delay is not attributable to the accused. The relevant observations are excerpted below:

“12. This court has to, therefore, consider the appellant’s claim for bail, within the framework of the NDPS Act, especially Section 37. In Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India, this court made certain crucial observations, which have a bearing on the present case while dealing with denial of bail to those accused of offences under the NDPS Act:

“On account of the strict language of the said provision very few persons accused of certain offences under the Act could secure bail. Now to refuse bail on the one hand and to delay trial of cases on the other is clearly unfair and unreasonable and contrary to the spirit of Section 36(1) of the Act, Section 309 of the Code and Articles 14, 19 and 21 of the Constitution. We are conscious of the statutory provision finding place in Section 37 of the Act prescribing the conditions which have to be satisfied before a person accused of an offence under the Act can be released. Indeed we have adverted to this section in the earlier part of the judgment. We have also kept in mind the interpretation placed on a similar provision in Section 20 of the TADA Act by the Constitution Bench in Kartar Singh v. State of Punjab [(1994) 3 SCC 569]. Despite this provision, we have directed as above mainly at the call of Article 21 as the right to speedy trial may even require in some cases quashing of a criminal proceeding altogether, as held by a Constitution Bench of this Court in A.R. Antulay v. R.S. Nayak [(1992) 1 SCC 225] , release on bail, which can be taken to be embedded in the right of speedy trial, may, in some cases be the demand of Article 21. As we have not felt inclined to accept the extreme submission of quashing the proceedings and setting free the accused whose trials have been delayed beyond reasonable time for reasons already alluded to, we have felt that deprivation of the personal liberty without ensuring speedy trial would also not be in consonance with the right guaranteed by Article 21. Of course, some amount of deprivation of personal liberty cannot be avoided in such cases; but if the period of deprivation pending trial becomes unduly long, the fairness assured by Article 21 would receive a jolt. It is because of this that we have felt that after the accused persons have suffered imprisonment which is half of the maximum punishment provided for the offence, any further deprivation of personal liberty would be violative of the fundamental right visualised by Article 21, which has to be telescoped with the right guaranteed by Article 14



which also promises justness, fairness and reasonableness in procedural matters.”

13. When provisions of law curtail the right of an accused to secure bail, and correspondingly fetter judicial discretion (like Section 37 of the NDPS Act, in the present case), this court has upheld them for conflating two competing values, i.e., the right of the accused to enjoy freedom, based on the presumption of innocence, and societal interest – as observed in Vaman Narain Ghiya v. State of Rajasthan (“the concept of bail emerges from the conflict between the police power to restrict liberty of a man who is alleged to have committed a crime, and presumption of innocence in favour of the alleged criminal...”). They are, at the same time, upheld on the condition that the trial is concluded expeditiously. The Constitution Bench in Kartar Singh v. State of Punjab made observations to this effect. In Shaheen Welfare Association v. Union of India again, this court expressed the same sentiment, namely that when stringent provisions are enacted, curtailing the provisions of bail, and restricting judicial discretion, it is on the basis that investigation and trials would be concluded swiftly.”

[Emphasis Supplied]

10. In the present case, the Applicant has been in custody since 25th April, 2022. Although charges were framed on 15th April, 2023, no prosecution witnesses have been examined thus far. As per the progress report submitted by the Trial Court, the delay in proceedings cannot be attributed to either the accused or the State. Nevertheless, it is a matter of serious concern that, to date, no prosecution witnesses have been examined. The delay in the trial is substantial and protracted. The Applicant has remained in custody for over three years, and given the current pace, the conclusion of the trial is likely to take considerable amount of time.

11. In such circumstances, this Court is required to strike a delicate balance between the fundamental right to a speedy trial, an essential component of the right to life and personal liberty enshrined under Article 21 of the Constitution of India, and the stringent conditions prescribed under Section 37 of the NDPS Act. As noted above, the right to life and liberty



cannot be rendered nugatory by unwarranted and prolonged delays in the judicial process. While the rigours of Section 37 must undoubtedly be applied with due care and caution, they cannot be permitted to override the constitutional guarantee of timely justice. Reliance is placed on the judgements of *Badsha SK v. State of West Bengal*,⁹ *Man Mandal & Anr v. State of West Bengal*,¹⁰ *Dheeraj Kumar Shukla v. State of Uttar Pradesh*.¹¹

12. In view of the aforesaid discussion, given that the Applicant has already spent nearly 3 years and 3 months in custody, and the trial is likely to take considerable amount of time, the Court is of the opinion that the delay in trial should weigh in favour of the Applicant.

Criminal Antecedents

13. It must further be noted that the Applicant has no criminal antecedents. The absence of any criminal record is a significant factor, distinguishing the Applicant from habitual or repeat offenders. This also supports the conclusion that the Applicant is unlikely to commit any offence while on bail.

Conclusion

14. In view of the foregoing discussion, this Court is of the opinion that in totality of the aforesaid circumstances, including the absence of videography of the place of search and seizure, clean antecedents and prolonged delay in trial, the Applicant has made out a case for grant of bail. The Applicant is, therefore, directed to be released on bail on furnishing a personal bond for a sum of INR 50,000/- with two sureties of the like amount, subject to the satisfaction of the Trial Court/Duty MM/Link MM, on the following

⁹ 2023 SCC OnLine SC 1867

¹⁰ 2023 SCC OnLine SC 1868

¹¹ 2023 SCC OnLine SC 918



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 she would be residing after her release and shall not change the address without informing the concerned IO/ SHO;
- f. 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.
- g. The Applicant shall report to the concerned IO on the Fourth Friday of every month at 4:00PM and shall not be kept waiting for more than one hour for this purpose.
- h. In terms of the judgment of the Supreme Court in ***Frank Vitus v. Narcotics Control Bureau & Ors***,¹² 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 in turn, shall communicate the order to all concerned authorities including civil authorities.

¹² 2025 INSC 30.



15. 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.
16. 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 should also not be taken as an expression of opinion on the merits of the case.
17. A copy of the order be sent to the Jail Superintendent for information and necessary compliance.
18. The bail application is allowed in the afore-mentioned terms.

SANJEEV NARULA, J

JULY 8, 2025