



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

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Reserved on: 30th October, 2025

Pronounced on: 04th November, 2025

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BAIL APPLN. 3801/2025

KINGSLEY NWANNE

s/o NWANNE

(Currently in JC since)

.....Petitioner

Through: Mr. Saurav Sharma, Mr. Siddharth
Srivastava, Mr. Sidak Singh Kalra,
Ms. Khushi Gupta, Advocates.

versus

NARCOTIC CONTROL BUREAU

Through

Zonal Director, Delhi Zonal Unit

West Block No. 1, Wing No. 5,

RK Puram, New Delhi - 110066

.....Respondent

Through: Mr. Arun Khatri, Sr. Standing Counsel
(NCB), Ms. Poonam Rani, Shelly
Dixit, Tracy Sebastian, Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Present Bail Application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 [corresponding to Section 439 of the Code of Criminal Procedure (CrPC), 1973] has been filed by the **Applicant/Kingsley Nwanne** for seeking **Regular Bail** in Case No. VIII/01/DZU/2021 under Sections 8(c), 21(c), 23(c), 29 of the Narcotic Drugs and Psychotropic



Substances Act, 1985(*hereinafter referred to as “NDPS Act”*) Sessions Case No. 187/2021 titled as ‘*NCB vs. JascentNakalungi and Ors.*’ pending adjudication before Ld. ASJ/Special Judge (NDPS), New Delhi District, Patiala House Court, Delhi.

2. It is submitted that the Applicant was arrested on 13.10.2023 and has been in Judicial Custody ever since i.e., for more than 52 months. His Bail Petition was dismissed by the Ld. ASJ/ Special Judge (NDPS), New Delhi *vide* Order dated 16.12.2021.

3. The Applicant preferred his first Bail Petition before this Court which was dismissed *vide* Order dated 02.06.2023. Second Bail Petition was dismissed by the Ld. ASJ/ Special Judge (NDPS), New Delhi District, Patiala Courts, Delhi *vide* Order dated 06.03.2025.

4. *At the outset, it is submitted that the present Application is premised on fresh grounds, which were not urged in the earlier Bail Application.*

5. The **brief facts of the case as per the Prosecution** is that on 27.01.2021, on the basis of secret information, ***co-accused JascentNakalungi*** (Uganda Passport No. A00106147) and ***Sharifah Namaganda*** (Uganda Passport No. B1547265) were apprehended. A search of their baggage led to the recovery of ***4 kg of heroin and 560 g of Cocaine from Nakalungi***, and ***4 kg of heroin and 510 g of cocaine from Namaganda***. The contraband was seized in accordance with law, in the presence of independent witnesses.

6. During the *panchnama*, a Test & Fly Receipt No. 13181 and travel documents were recovered, bearing a handwritten note: “*Vikas Puri, Pastry Place (Outer Ring Road) 8929857072 KC*”.

7. Upon initial inquiry, In her statement, co-accused Sharifah Namaganda stated that she had arrived in Delhi from Sharjah on 28.01.2021



with her cousin co-accused Jascent Nakalungi. The drugs had been given to her in Uganda by her cousin **Sara**, who instructed her along with co-accused *Jascent Nakalungi* to deliver them to the user of mobile number 8929857072 at Pastry Place, Vikas Puri, for which she was promised USD 2,000.

8. On 28.01.2021, the NCB team, accompanied by both women, went to Pastry Place, Vikas Puri. *Sharifah Namaganda* called the Indian number and soon thereafter, a man identified as **Kingsley (the Applicant herein)** arrived. He was intercepted and admitted that he had come to collect the baggage containing drugs from both the women. **Upon confirmation of the identity of the suspect, when Kingsley appeared and was apprehended.**

9. **Applicant/Kingsley**, in his statement under Section 67 NDPS Act, admitted that he had first come to India in 2003 and had previously been jailed for Visa issues. He later overstayed his bail period and lived in Delhi with his countrymen. Facing financial difficulties, he was introduced to the drug trade by one **Frank**, a Ugandan national, who used to send women as drug couriers to India.

10. Applicant/Kingsley stated that his role was to receive these drugs from the couriers and supply them to Nigerians in Mumbai and Bangalore. On 28.01.2021, while in Mumbai for business, he was informed about the two women arriving with drugs and received their passport photos. They had been directed to go to the Pastry Place for delivery, where he was intercepted there by NCB officers.

11. Call Detail Records (CDRs) further confirmed that on 29.05.2021, *Sharifah Namaganda* made calls from her number to the mobile on the number used by Kingsley.

12. The investigation established that *Jascent Nakalungi*, *Sharifah*



Namaganda, and *Kingsley*, along with their associates, were part of a criminal conspiracy to traffic narcotic drugs into India for illegal profit, thereby violating provisions of the NDPS Act.

13. The Applicant submits that the entire Prosecution case is based solely on the Disclosure Statement of the pax, and there is no substantial evidence linking the Applicant to the alleged offence, which clearly indicates that the case against him lacks credibility. Furthermore, the slip found in the possession of the co-accused mentioned the name “KC” as the intended recipient of the contraband, but the Applicant initials do not correspond to “KC.” It is contended that the Applicant has no connection whatsoever with the co-accused.

14. It is submitted that even according to the *Jamatalashi* dated 28.01.2021, no mobile phone or phone number was seized from the Applicant that could substantiate the allegation that he communicated with the co-accused to collect the contraband. Moreover, ***no contraband was recovered during the Applicant’s personal search*** or from his residence or shop.

15. The Applicant has filed the present Application seeking **Regular Bail on the grounds** which are: (i) No *prima facie* case made out against the Petitioner; (ii) non-joinder of independent witnesses; (iii) no attempt made for digitally recording the search & seizure operation, and (iv) delay in conclusion of trial.

16. It is submitted that it is the case of the Prosecution that the Petitioner responded through this number when he was called from the mobile of the co-accused, and he came near Pastry palace, Vikas puri in response to the phone call of his co-accused, from where he was arrested. However, even as



per the Mobile phone/Electronic Gadgets seizure memo dated 28.01.2021, no sim number has been mentioned by the raiding team. ***This shows that whole story is false and fabricated.***

17. The entire prosecution case is merely based on statement of both the co-accused under Section 67 NDPS and no corroborative evidence has been adduced against petitioner since no recovery of contraband has been made against the petitioner. The statement under Section 67 NDPS cannot be used as confessional statement in the trial of an offence under the NDPS Act.

18. Reliance is placed on Mohd Nasar vs. Narcotics Control Bureau &Anr., Bail Appl. 1574/2023; this Court held that the disclosure statement of a co-accused is not admissible in evidence. The Court noted that the only material against the Petitioner was the co-accused's statement under Section 67 NDPS Act, but as per the case of Toofan Singh vs. State of Tamil Nadu, 2020 INSC 620 such statements cannot be relied upon.

19. Reliance is also placed on Surinder Kumar Khanna vs. Intelligence Officer, Directorate of Revenue Intelligence, (2018) 8 SCC 271.

20. The CDR calls between the co-accused and the Applicant does not act as a conclusive proof to make the accused guilty under the NDPS Act or absence of any other incriminating material, the CAF/CDR details cannot be a ground to deny the Bail.

21. Reliance is also placed on Phundreimayum Yas Khan vs. State (NCT of Delhi), 2023 SCC OnLine Del 135, the Court held that mere call records showing contact with co-accused, without any financial dealings or recovery of narcotics from the accused or their premises, is not sufficient ground to deny Bail.

22. It is submitted that the raiding team failed to prepare a *panchnama*



during the trap, which is a mandatory requirement under the NDPS Act. Its absence, along with the lack of details about the raiding team, suggests possible malice and fabrication of the case against the Applicant.

23. Reliance is also placed on Ram Prakash vs. State, 2014 SCC OnLine Del 6936.

24. It is submitted that the whole trap proceedings against the Applicant, was conducted in the absence of independent witness. Under the NDPS Act, the presence of independent witnesses during search and seizure proceedings is a procedural safeguard intended to ensure transparency and prevent abuse of power.

25. Reliance is also placed on Krishan vs. State (NCT of Delhi), 2023 SCC OnLine Del 8646. Reliance is placed on Bantu vs. State (NCT of Delhi), 2024 SCC OnLine Del 4671, wherein this Court unequivocally held that videography and photography of search and seizure, are indispensable to ensure transparency in the investigation process.

26. It is submitted that the Applicant has been in judicial custody since 2021, and only 5 prosecution witnesses have been examined so far, with no likelihood of the trial concluding soon. This prolonged delay violates the Petitioner's fundamental right to a speedy trial under Article 21 of the Constitution of India.

27. Reliance is also placed on Hushn Jahan vs. Narcotics Control Bureau, Bail Appl. 3314/2024, granted Bail to the accused where there was a delay of 20 months and little possibility of an early conclusion of the trial, recognizing that prolonged incarceration without adjudication on merits is anathema to the principles of justice.

28. On the ground of delay in trial, reliance is also placed on Kan Damian



Kouassi vs. State NCT of Delhi, 2025 SCC OnLine Del 767; Jitender vs. State NCT of Delhi, 2025 SCC OnLine Del 1092; Shazeb vs State NCT of Delhi, 2025 SCC OnLine Del 1333; Rajesh Kumar vs State, 2024 SCC OnLine Del 872; Union of India vs. K.A. Najeeb, (2021) 3 SCC 713; Mohd. Muslim vs. State (NCT of Delhi), 2023 SCC OnLine SC 352 and Rabi Prakash vs. State of Odisha, 2023 SCC OnLine SC 1109.

29. Lastly, it is submitted that the Applicant undertakes to abide by any reasonable terms and conditions as this Hon'ble Court may deem fit to impose in the circumstances of this case.

30. Hence, a prayer is made for grant of Bail.

31. The Status Report has been filed on behalf of the Respondent/State which is taken on record.

32. The Bail Application of the Applicant/Kingsley is strongly opposed and it is stated that under Section 120A Indian Penal Code, 1860, Conspiracy is defined as an agreement between two or more persons to commit an illegal act or a legal act by illegal means. Such conspiracies are often proved through **circumstantial evidence**, as direct evidence is rare. Reliance is placed on Eran Eliav vs. State, 2008 Drugs Cases (Narcotics) 98, both abetment and conspiracy can be inferred from consistent and credible indirect evidence.

33. Reliance is also placed on NCB vs. Kashif, Crl. Appeal No.5544/2024 @ SLP (Crl.) No.12120/2024 wherein the Apex Court had observed that Section 52A Sub-Section 2 lays down the procedure as contemplated in Sub-Section 1 thereof, and any lapse/delayed compliance would merely be a procedural irregularity which would neither entitle the accused to be released on Bail nor would vitiate the trial on that ground alone.

34. It is further stated that there has been no violation with respect to the



panchnama proceedings as the independent witnesses on request of the Respondent has joined the proceedings and thereafter, had signed the *panchnama* which is placed on record.

35. It is submitted that the present matter is at the stage of Prosecution Evidence and 6 out of 14 witnesses have already been examined.

36. It is stated that *vide* Order dated 26.03.2025, this Court had directed the Respondent/NCB to file a Status Report regarding the delay in conduct of trial. It is submitted that the matter was listed for Arguments on Charge on 30.07.2021; however, the hearing could not take place due to administrative reasons, specifically the non-production of the accused persons. Consequently, an adjournment was sought on behalf of the learned counsel for the accused. Thereafter, on 25.11.2021, another adjournment was requested by the counsel for the accused, whereupon they were granted a final opportunity to advance arguments. Subsequently, on 07.02.2022, the learned counsel for the Applicant once again sought time to address Arguments on Charge, which was duly granted. Thereafter, **Charges were framed against all accused persons on 27.04.2022**, and the matter was listed for recording of Prosecution Evidence on 16.07.2022. It is further submitted that on 17.04.2023, the case was again listed for recording of Prosecution Evidence; however, as recorded in the Order passed on that date, except for the Counsel representing Applicant/Kingsley, no other Counsel was present.

37. In light of the above circumstances, **it is submitted that there has been no delay attributable to the Prosecution.**

38. It is submitted that the acts of the present Applicant, along with the other accused persons, are grave, nefarious, and detrimental to the interests of society. There exists a strong likelihood that the Applicant may abscond,



evade the process of law, and not be available to face trial if released on Bail.

39. It is further submitted that all mandatory provisions of the NDPS Act have been duly complied with and there has been no violation of any statutory requirement. The accused persons were arrested in accordance with law and were duly informed of the grounds of their arrest.

40. Furthermore, since a commercial quantity of contraband was recovered in the present case, the bar under Section 37 NDPS Act squarely applies.

41. Lastly, it is submitted that under Section 35 NDPS Act, there exists a presumption against the accused persons. This provision stipulates that in any prosecution for an offence under the Act, which requires a culpable mental state, the court shall presume the existence of such mental state on the part of the accused unless the contrary is proved.

42. Reliance is placed on Prasanta Kumar Sarkar vs. Ashis Chatterjee and Anr., (2010) 14 SCC 496 wherein a Division Bench of the Apex Court laid down the principles for examining the correctness of orders granting Bail to an accused.

43. *The Bail Application filed on behalf of the Applicant/Kingsley is strongly opposed, and it is prayed that he may not be released on Bail.*

Submissions heard and record perused.

44. Section 37 of the NDPS Act, 1985, carves out a special provision for bail in respect of certain offences, including those involving a commercial quantity of narcotics. The provision lays down ***two mandatory conditions***, commonly known as the “*twin tests*,” that must be satisfied before bail can be granted.

45. The Court must have “***reasonable grounds for believing***” that the accused is “not guilty” and is “***not likely to commit any offence***” if released.



This standard is significantly higher than the one for granting Bail in other criminal cases.

46. At the outset, the **first aspect** for consideration is that the evidence on record *prima facie* demonstrates the existence of a coordinated criminal conspiracy involving the Applicant, the co-accused persons, Sharifah Namaganda and Jascent Nakalungi, as well as their foreign associates, Frank and Sara, for the purpose of trafficking narcotic substances into India. From the sequence of events, it is evident that the Applicant acted jointly according to a pre-arranged plan. The recovery of significant quantities of contraband from the two co-accused *i.e. 8 kgs of Heroin and 1070 grams of Cocaine i.e. Commercial quantity*, together with the Applicant's arrival at the designated location immediately following a call to his specified mobile number, provides clear evidence of his active involvement in the illicit transaction of contraband.

47. Moreover, the Applicant was intercepted and apprehended as he arrived at the location, corroborating the co-accused's statement that the delivery was intended for him. The Applicant's conduct in coming to receive the baggage containing the said contraband, further reinforces the Prosecution's case.

48. Thus, all these circumstances establish a *prima facie* connection between the Applicant and the broader conspiracy of organized drug trafficking. *The Applicant's role, as one who was to receive and further distribute the contraband within India, cannot be viewed as peripheral or minor.*

49. The **second aspect** which merits consideration is the contention of the Applicant regarding the procedure of arrest and that non-joinder of



independent witnesses. However, it is a settled position of law that such irregularities, even if assumed to exist, by themselves do not vitiate the investigation or render the evidence inadmissible, unless they cause demonstrable prejudice to the accused.

50. The Apex Court in Narcotics Control Bureau vs. Kashif, (2024) 11 SCC 372, has observed as under:-

“ 50.5 Any procedural irregularity or illegality found to have been committed in conducting the search and seizure during the course of investigation or thereafter, would by itself not make the entire evidence collected during the course of investigation, inadmissible. The court would have to consider all the circumstances and find out whether any serious prejudice has been caused to the accused.”

51. Similarly, the Apex Court in State of Karnataka vs. Sri Darshan, 2025 SCC OnLine SC 1923, has held that ***a procedural lapse by itself, does not justify the grant of Bail in cases involving serious offences.***

52. The **third aspect** is the contention of the Applicant is that he has been in the Judicial Custody since 13.10.2023 i.e. for about two years. The record indicates that several adjournments were sought by the counsel for the accused, including the present Applicant. The Charges were framed only after multiple opportunities were granted and out of 14 Prosecution Witnesses, 6 Witnesses have been examined till date.

53. In this regard, the three Judge Bench of the Apex Court in Narcotics Control Bureau vs. Mohit Aggarwal, (2022) 18 SCC 374, has observed that *the length of the period of his custody or the fact that the charge-sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent*



under Section 37 of the NDPS Act.

54. Similarly, in Gurwinder Singh vs. State of Punjab, (2024) 5 SCC 403, the Apex Court has observed that mere delay in trial in grave offences cannot be used as a ground to grant Bail.

55. In Gobarbhai Naranbhai Singala vs. State of Gujarat, (2008) 3 SCC 775, the Apex Court while relying upon State of U.P. vs. Amarmani Tripathi, (2005) 8 SCC 21 has observed that long period of incarceration cannot itself be the ground for grant of Bail.

56. It is also important to note that the Applicant is a foreign national and the possibility of his fleeing from justice, cannot be ignored.

57. It cannot be said that there is any inordinate delay in the trial. Rather, the trial is proceeding at its own pace.

58. Considering the gravity of the offence, the role of the Applicant in distribution of the contraband and the fact that Charges have already been framed and 6 out of 14 witnesses have already been examined, it cannot be said that there is any delay in the trial, the present case is not fit for grant of Bail to the Applicant.

59. The Bail Application is, therefore, **dismissed**. Pending Applications are disposed of, accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

NOVEMBER 04, 2025/R