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

+ **BAIL APPLN. 3879/2025 & CRL.M.A. 30252/2025**

YEBOAH ADJEI

.....Applicant

Through: Ms. Anshula, Adv.
through V.C.

versus

THE STATE (GOVT. OF NCT OF DELHI)

.....Respondent

Through: Ms. Priyanka Dalal, APP
for the State.
SI Prem Narayan, Anti
Narcotics Cell & WSI
Sapna, PS Chhawla.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

10.10.2025

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1. The present application is filed seeking regular bail in FIR No.86/2023 dated 17.03.2025, registered at Police Station Mohan Garden, for offences under Sections 8/22 Narcotic Drugs and Psychotropic Substances Act, 1985.

2. Briefly stated, on the basis of secret information, the applicant, who is a citizen of Ghana, was apprehended and a recovery of 56g of illegal Amphetamine drug was effected from his possession. During investigation, the applicant failed to produce his visa and passport regarding his stay in India, due to which, Section 14 of the Foreigners Act, 1946 was added in the case.

3. The learned counsel for the applicant submits that the applicant is innocent and he has been falsely implicated in the

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present case.

4. She submits that the present applicant has been in custody since 17.03.2023 and only four out of nineteen witnesses have been examined till now. She submits that the applicant is entitled to be granted bail on the ground of delay in trial.

5. She submits that there is non-compliance of Section 50 of the NDPS Act as well as the search was effected in the presence of the officer who had also authorised the raiding team, which raises doubt about the impartiality of the search process.

6. *Per contra*, the learned Additional Public Prosecutor for the State vehemently opposes the grant of any relief to the applicant and submits that the applicant has undisputably been staying in this country without a valid Visa or proper documents.

7. She submits that the applicant is a flight risk and he had no source of income or permanent residence to secure his presence in Delhi. She submits that the applicant's visa had expired way back in the year 2019 and he has continued to remain illegally in India since then.

8. I have heard the counsel and perused the record.

9. It is settled law that the Court, while considering the application for grant of bail, has to keep certain factors in mind, such as, whether there is a *prima facie* case or reasonable ground to believe that the accused has committed the offence; circumstances which are peculiar to the accused; likelihood of the offence being repeated; the nature and gravity of the accusation; severity of the punishment in the event of conviction; the danger of the accused absconding or fleeing if released on bail; reasonable apprehension of the witnesses being threatened;



etc.

10. In the present case, it is alleged that commercial quantity of Amphetamine was recovered from the possession of the applicant. Once the rigours of Section 37 of the NDPS Act are attracted, as provided under the Section, the Court can grant bail only when the twin conditions stipulated in Section 37(1)(b) of the NDPS Act are satisfied in addition to the usual requirements for the grant of bail– (1) The court must be satisfied that there are reasonable grounds for believing that the person is not guilty of such offence; and (2) That the person is not likely to commit any offence while on bail.

11. It is argued that there is non-compliance of Section 50 of the NDPS Act in the present case as the search was conducted in the presence of the officer who had authorised the raid instead of an independent Gazetted Officer or Magistrate. In the case of ***Ranjan Kumar Chadha v. State of Himachal Pradesh : 2023 INSC 878***, the Hon'ble Supreme Court opined that an accused may waive his right under Section 50 of the NDPS Act as long as the waiver is reduced to writing. The FIR reflects that when the notice under Section 50 of the NDPS Act was given to the applicant, he waived his right for search before a gazetted or magistrate by writing an undertaking to this effect on the notice and signing the same. The learned Trial Court has also observed while dismissing the applicant's bail application that on perusal of the notice under Section 50 of the NDPS Act, it is clear that he never opted to be searched before a gazetted officer or magistrate. While the veracity of the applicant's defence in this regard and cogency of his waiver will be assessed during the



course of the trial, at this stage, *prima facie*, it appears that the applicant voluntarily waived his right under Section 50 of the NDPS Act and he cannot be allowed to benefit out of his waiver.

12. While it is open to the applicant to press the aforesaid defence as well as other defences during the course of trial, at this stage, no reasonable ground is made out to believe that the applicant is innocent.

13. The only other ground pressed at this stage is the applicant's long incarceration. While it is trite law that long period of incarceration is a relevant factor for considering the application for bail, however, the same cannot be the sole ground for grant of bail. In the present case, commercial quantity of contraband has been recovered from the applicant. The applicant is stated to have spent over two and a half years in custody and the matter is at the stage of prosecution evidence wherein four witnesses have already been examined. It is pertinent to note that the offence under Section 22 of the NDPS Act has been levelled against the applicant and the imprisonment for the said offences cannot be less than 10 years. It cannot be presumed at this stage that the trial will not conclude within reasonable time.

14. Serious apprehensions have also been raised by the State that the applicant had been staying in this country without any valid Visa and he had no source of income, and in such circumstances, there is every possibility that he be not coming back to India. It is pointed out that the applicant also does not have any permanent address in India.

15. On being pointedly asked, no satisfactory answer has been forthcoming as to why the applicant continued to stay illegally in



the county and what work he was involved in at the time his apprehension. The same raises further doubt against the applicant, and it is possible that the applicant may evade trial if he is granted bail.

16. In such circumstances, this Court is of the opinion that the applicant has not made out a *prima facie* case for grant of bail.

17. The present bail application is therefore dismissed.

18. 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.

AMIT MAHAJAN, J

OCTOBER 10, 2025
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