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

+ **BAIL APPLN. 3909/2025 & CRL.M.A. 30487/2025**

LILIAN NYAMBURA

.....Petitioner

Through: Mr. Akash Gautam, Adv.
(through VC)

versus

AIR CUSTOMS

.....Respondent

Through: Mr. Atul Tripathi, SSC

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **13.10.2025**

1. The present application is filed seeking regular bail in C No. VIII(AP)10/P&I/4587-D/ARRIVAL/2023, for the offences under Sections 8/21/23 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('**NDPS Act**').

2. Succinctly stated, the applicant stated to be a Kenyan national, was intercepted by the Custom Authorities at Indira Gandhi International Airport, New Delhi on 26.12.2023 upon her arrival from Addis Ababa. During routine surveillance, the applicant was observed to be behaving in a suspicious manner which prompted her interception. Consequently, notices under Sections 102 and 103 of the Customs Act, 1962 and Section 50 of the NDPS Act were served on the applicant. Nothing suspicious was found in the baggage of the applicant. On further enquiry, the applicant admitted that she had ingested some capsules containing narcotic substances. The applicant thereafter expressed her desire to go to the toilet. Thereafter, the applicant

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excreted 50 oval shaped capsules at the Airport. The applicant was thereafter taken to Safdarjung Hospital for her medical examination. During her stay in the hospital, the applicant further eased out 30 more swallowed capsules. These capsules were later confirmed to contain cocaine, with the total recovered quantity amounting to 789 grams.

3. The applicant was discharged from the hospital on 05.01.2024 and was thereafter arrested on 06.01.2024.

4. The learned counsel for the applicant submits that the applicant is a Kenyan national who has been in custody since 06.01.2024. He submits that there was a non-compliance of Section 103 of the Customs Act, 1962 inasmuch as the alleged notice only recorded consent for X-ray screening and not for invasive medical procedures for excretion of capsules. He submits that there was also a non-compliance of Section 50 of the NDPS Act insofar as only a single notice was served on the applicant whereas multiple recoveries were effected on different dates. He submits that the procedure mandated under Section 52A of the NDPS Act has also not been complied with inasmuch as there was a delay of more than 2 months in drawing the samples before the learned Magistrate which was conducted only on 21.02.2024 despite the fact that the alleged recoveries were concluded in December, 2023.

5. 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.

6. It is unequivocally established that, to be granted bail, the accused charged with offence under the NDPS Act must fulfil the conditions stipulated in Section 37 of the NDPS Act. Section 37 of the NDPS Act reads as under:

“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 19 or Section 24 or Section 27-A 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 oppose the application, the court is satisfied that there are 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 accusation in the present case is with regard to the recovery of commercial quantity of contraband. 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.

8. In the present case, the applicant was intercepted at Indira Gandhi International Airport, New Delhi on 26.12.2023. Allegedly, the applicant subsequently admitted to have ingested capsules containing narcotic drugs whereafter the applicant was found to have ingested 80 capsules of cocaine out of which 50 were excreted at the Airport and 30 at the Safdarjung Hospital. The total quantity of contraband found in the capsules was 789 grams of cocaine.

9. The contraband was being carried by the applicant surreptitiously by ingesting the same, which clearly suggests that she was consciously facilitating the illegal trade of contraband. The same is sufficient to *prima facie* establish conscious possession under the NDPS Act.

10. The Hon'ble Apex Court in ***Narcotics Control Bureau v. Kashif* : 2024 SCC OnLine SC 3848**, while interpreting the scope and mandatory nature of Section 37 of the NDPS Act, reiterated the well-settled position that Courts must strictly adhere to the statutory conditions for grant of bail in cases involving commercial quantity of contraband. It was held as under:

“COMPLIANCE OF THE MANDATE UNDER SECTION 37:

8. There has been consistent and persistent view of this Court that in the NDPS cases, where the offence is punishable with minimum sentence of ten years, the accused



shall generally be not released on bail. Negation of bail is the rule and its grant is an exception. While considering the application for bail, the court has to bear in mind the provisions of Section 37 of the NDPS Act, which are mandatory in nature. The recording of finding as mandated in Section 37 is a sine qua non for granting bail to the accused involved in the offences under the said Act. Apart from the granting opportunity of hearing to the Public Prosecutor, the other two conditions i.e., (i) the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that (ii) he is not likely to commit any offence while on bail, are the cumulative and not alternative conditions.

9. In State of M.P. v. Kajad², this Court while considering the scope of Section 37 in the light of the scheme of the Act, had observed that:—

“A perusal of Section 37 of the Act leaves no doubt in the mind of the court that a person accused of an offence, punishable for a term of imprisonment of five years or more, shall generally be not released on bail. Negation of bail is the rule and its grant an exception under sub-clause (ii) of clause (b) of Section 37(1). For granting the bail the court must, on the basis of the record produced before it, be satisfied that there are reasonable grounds for believing that the accused is not guilty of the offences with which he is charged and further that he is not likely to commit any offence while on bail. It has further to be noticed that the conditions for granting the bail, specified in clause (b) of subsection (1) of Section 37 are in addition to the limitations provided under the Code of Criminal Procedure or any other law for the time being in force regulating the grant of bail. Liberal approach in the matter of bail under the Act is uncalled for.”

10. Similarly, recently a three-Judge Bench in NCB v. Mohit Aggarwal³, considering the earlier judgments on the parameters of bail available under Section 37 of the said Act held 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.”

11. Merely on account of passage of time or pendency of trial,



by itself, cannot constitute a ground to dilute the rigour of Section 37 of the NDPS Act where serious allegations and substantial recovery of commercial quantity are involved. Contraband was hidden inside the body of the applicant and 50 capsules were excreted at the Airport and 30 capsules at the Safdarjung Hospital. The same, by itself, is sufficient to show at this stage, the involvement of applicant in attempting to smuggle large quantity of contraband. Though the applicant has been in custody since 06.01.2024, however, on the face of direct recovery of contraband that was hidden inside the body, no lenient view can be taken. The trial has already commenced and three witnesses have already been examined. Thus, at this stage, it cannot be said that the trial will take long period of time to conclude.

12. The contentions raised by the applicant in relation to the non-compliance of Sections 50, 52A, 103 of the Customs Act, 1962, would be seen at the time of trial and cannot be commented upon at this stage. The technicalities of non-compliance will not come in aid of the applicant to secure bail at this stage.

13. The allegations against the applicant are, undeniably, grave and serious in nature. The quantity of cocaine recovered far exceeds the threshold for commercial quantity as prescribed under the NDPS Act. Having regard to the overall facts and circumstances of the case, the nature of the alleged offence, and the legislative bar contained in Section 37 of the NDPS Act, this Court does not find it appropriate to enlarge the applicant on bail.

14. The present bail application is accordingly dismissed.



15. 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 13, 2025
"SS"