



\$~1

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

+ **BAIL APPLN. 4366/2024**

NAMUBIRU JANAT

.....Petitioner

Through: Mr. Rohan Gupta and Mr. Anoop
Kumar Gupta, Advs.

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Tarang Srivastava, APP for State
with SI Parveen PS Special Cell

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

05.12.2025

%

1. The present petition has been filed under Section 528 BNSS seeking regular bail in connection with FIR No. 40/2022 under Sections 21/29 NDPS Act registered at PS Special Cell.
2. The case of the prosecution is that acting upon a secret information one lady namely Maurey Erna Gangadien was apprehended and 1500 gms Cocaine was recovered from her possession concealed in cosmetic items.
3. During investigation the said accused disclosed that one of her known person, namely Rihaan who runs a cosmetics and garments shop in Sreda Tortona, Suriname offered her the task of smuggling drug in different parts of India under the guise of medical treatment.
4. Rihaan had many customers in India and the accused mentioned above also visited India in October, 2021 with her first consignment of drugs



which she delivered to one Sylvester in Bombay as per the instructions of Rihan.

5. Further, on 14.02.2022 as per the instructions of Rihan, she delivered some amount of drugs to the present petitioner in Karol Bagh. On the basis of secret information that the petitioner will be coming near Munirka Foot over bridge near IIT Gate flyover Munirka to receive/deliver drugs, a raid was conducted and the petitioner was apprehended.

6. During the search of her baggage, 43 gms of Cocaine was recovered. Further, 307 gms. of Cocaine was also recovered from the petitioner's flat.

7. The learned counsel appearing on behalf of the petitioner submits that the recovery made from the person of the petitioner is an intermediate quantity.

8. As regards, the recovery made from the residence of the petitioner, he submits that the prosecution has failed to prove that the flat from which the recovery of 307 gms of Cocaine was made was taken on rent by the petitioner.

9. In support of his submission, he invites attention of the Court to the testimony of Sh. Ram Dhyan Singh/PW6, the owner/landlord of flat in question from where recovery of 307 gms of Cocaine was made. He submits that the said witness has clearly stated that the petitioner never resided in his house as a tenant.

10. Apart from the merits, he further contends that the trial is moving at a very tardy pace. Elaborating further, he contends that the prosecution has cited as many as 38 witnesses but till date only 05 witnesses have been examined in full whereas 06 witness has been partly examined, whereas the petitioner has been in custody since 21.02.2022.



11. He submits that the petitioner has no previous involvements.
12. He places reliance on the decision of the Hon'ble Supreme Court in (i) *Rabi Prakash vs. The State of Odisha*¹, (ii) *Naeem Ahmed Alias Naim Ahmad vs. Govt. of NCT of Delhi*² and (iii) *Man Mandal & Anr. vs. State of West Bengal*³
13. *Per contra*, Mr. Tarang Srivastava, learned APP appearing on behalf of the State has argued on the lines of the status report.
14. He strongly controverts the submission that the petitioner was not tenant of the premises from where 307 gms. of Cocaine was recovered. For this purpose, he places reliance on the photographs of the petitioner on the rent agreement and the police verification and Form C/ Arrival Report. He submits that all the three documents carry the same photographs which is of the petitioner.
15. I have heard the learned counsel for the petitioner, as well as, learned APP for the State and have perused the record.
16. On a specific query posed by the Court as to the period of incarceration of the petitioner, the learned APP with reference to the nominal roll which is on record, fairly states that the petitioner has been incarcerated for 03 years 09 months.
17. It is also not in dispute that the prosecution has cited 38 witnesses and till date only 05 witnesses have been fully examined and 06 witnesses are still under examination. Evidently, the conclusion of trial will take long time.
18. It is also not the case of the prosecution that the petitioner has any

¹ 2023 SCC OnLine SC 1109

² 2024 SCC OnLine SC 220,

³ 2023 SCC OnLine SC 1868,



previous involvements.

19. The law is well settled that prolonged incarceration generally militates against the fundamental right of speedy trial guaranteed under Article 21 of the Constitution and in such a condition, the conditional liberty must override the statutory embargo created under Section 37 of the NDPS Act. Reference in this regard may be had to the decision of the Hon'ble Supreme Court in ***Rabi Prakash vs. The State of Odisha*** (supra), wherein it was observed as under:

*“4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent - State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. **The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.**”*

(emphasis supplied)

20. Likewise, in ***Naeem Ahmed Alias Naim Ahmad vs. Govt. of NCT of Delhi*** (supra), the Hon'ble Supreme Court granted bail to the accused from whom commercial quantity of contraband was recovered, having regard to his custody of 01 year and 11 months, the fact that the accused had no criminal antecedents and that the conclusion of trial would take time. The relevant paras of the decision reads as under:

“8. It is informed by learned counsel for the parties that the appellant has, as on date, spent more than 01 year and 11 months in custody. The investigation is complete but framing



of the charges is yet to be done. The conclusion of trial will thus take time. There are no criminal antecedents.

9. It is a seriously debatable question of fact whether the appellant was also found in the conscious possession of the contraband (smack). But such a question of fact will obviously be determined by the Trial Court at an appropriate stage. That being so, it seems to us that as of now, the twin test of Section 37 of the Act, need not be invoked against the appellant.

10. Taking into consideration the totality of the circumstances, especially the period of custody undergone by the appellant however, without expressing any views on the merits of the case, the appeal is allowed. Accordingly, the appellant is ordered to be released on bail subject to his furnishing the bail bonds to the satisfaction of the Trial Court."

(emphasis supplied)

21. Likewise, in ***Man Mandal & Anr. vs. State of West Bengal*** (supra), the Hon'ble Supreme Court granted bail to the petitioners therein from whom commercial quantity of contraband had been recovered considering the fact that they had been incarcerated for a period of almost 02 years and the trial was not likely to conclude in the near future.

22. Having regard to the aforesaid circumstances, this Court is of the view that the petitioner has made out a case of regular bail. Accordingly, the petitioner is admitted to bail on furnishing a personal bond for a sum of Rs.50,000/- with one surety of the like amount, subject to the satisfaction of the Trial Court/Duty MM, on the following conditions:

- a) The petitioner 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;

- b) The petitioner shall under no circumstance leave the country without the permission of the Trial Court;
- c) The petitioner shall appear before the Trial Court as and when directed;
- d) The petitioner shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;
- e) The petitioner shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times;
- f) In terms of the judgment of the Supreme Court in ***Frank Vitus v. Narcotics Control Bureau & Ors***⁴, the State shall immediately communicate the order granting bail, to the concerned Foreign 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 in order to enable them to take appropriate steps under the Foreigners Act, 1946, the Registration of Foreigners Rules, 1992 and Foreigners Order, 1948, in accordance with law.

23. It is clarified that the observations made herein above are only for the limited purpose of deciding the present bail application and the same shall not be construed as an expression of opinion on merits of the case.

24. The petition is disposed of.

25. Copy of the order be forwarded to the concerned Jail Superintendent

⁴ (2025) 3 SCC 1



for necessary compliance.

26. Order *dasti* under signatures of the Court Master.

VIKAS MAHAJAN, J

DECEMBER 5, 2025

N.S. ASWAL