



2025:DHC:1456



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

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Pronounced on: 5th March, 2025

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BAIL APPLN. 4790/2024

SOM DUTT SHARMA

S/o Late Sh. Jagdish Prasad Sharma

R/o G-1, Plot No. 35, Gyan Khand-2,

Indirapuram, Ghaziabad, UP-201014

....Appellant

Through: Mr. A.K. Mishra, Mr. Sudhanshu Dwivedi, Mr. Arpit Mishra and Mr. Anik Srivastav, Advocates.

versus

DIRECTORATE OF REVENUE INTELLIGENCE,

ABHINAV SETH, INTELLIGENCE OFFICER,

HEADQUARTERS NEW DELHI

....Respondent

Through: Mr. Satish Aggarwal, Advocate.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. First Regular Bail Application under Section 439 of the *Code of Criminal Procedure, 1973* (hereinafter referred to as 'Cr.P.C.)/Section 483 of the *Bharatiya Nagarik Suraksha Sanhita, 2023* (hereinafter referred to as 'B.N.S.S. ') read with Section 37 of the *Narcotic Drugs and Psychotropic Substances Act, 1985* (hereinafter referred to as 'NDPS Act') has been filed on behalf of the Appellant, Mr. Som Dutt Sharma claiming regular Bail in



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Complaint bearing SC No. 180/2024 under Section 21/23 and 29 of the NDPS Act, 1985.

2. As per the case of Directorate of Revenue Intelligence (*hereinafter referred to as 'DRI'*), information was received in the Office of Directorate of Revenue Intelligence, Headquarters that Mr. Som Dutt Sharma (Applicant) holding an Indian Passport No. T0949210 would be arriving at Tribunal-3, Indira Gandhi Airport (*hereinafter referred to as 'IGI Airport'*), New Delhi by Ethiopian Airlines Flight No. ET920 dated 18.09.2023 from Accra (ACC), Ghana to Addis Ababa (ADD) via Flight No. ET686 dated 19.09.2023, would be arriving at New Delhi at 08:10 hrs on 19.09.2023 and that he has concealed some Narcotics Drugs/Psychotropic substances in his baggage or on his person.

3. A team of DRI officers reached the IGI Airport, New Delhi and in the morning of 19.09.2023, the Applicant was intercepted near the Exit gate of Customs Arrival Hall by the DRI officers in the presence of the Independent witnesses. The Applicant was escorted to Custom's Room situated at Customs Arrival Hall of the T-3, IGI Airport and was asked if he was carrying any kind of Narcotic Drugs/psychotropic substances as his activities seemed suspicious, to which he replied in negative.

4. At the time of interception, Mr. Som Dutt, the Applicant was found to be carrying black colour back pack bag and two checked-in baggage i.e. one green colour Trolley bag having marking "KAMILIANT" and second brown colour trolley bag wrapped with transparent colour polythene sheet with a marking "SARAFOU" and baggage tag. He was asked to get his Back Pack and two checked-in baggage scanned through X-Ray inspection Machine.



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Nothing suspicious could be noticed in the Back Pack and the green Trolley bag, but some suspected/suspicious images were noticed in the brown Trolley bag. The Applicant was asked to pass through the Door Frame Metal Detector (DFMD), but no beep sound was heard.

5. Notice under Section 50 of the N.D.P.S. Act, 1985 was given and he was informed about the requirement of his personal search and of the baggage carried by him. He was also apprised about his legal rights about his personal search and the search of hand carry bag, which could be conducted in the presence of Magistrate or Gazetted Officer, to which the Applicant gave his written consent on the body of the Notice itself that the personal search and search of the Backpack may be conducted by the DRI officials.

6. On his personal search and search of Back Pack, \$1041 along with personal documents and personal belongings were found. The relevant documents were retained while the originals were returned to the Applicant.

7. On opening of the *brown colour trolley bag*, it was found to contain clothes. On removal of the clothes, trolley bag was found to be heavier than usual. It was found to have a black colour hard plastic sheet affixed with the help of screws on the four wall-sides of the lower portion of the trolley bag. For further examination, the plastic sheet was removed and upon cutting the plastic sheet, it was found to contain white colour powdery substance. It was taken out from the Trolley bag and was kept in transparent plastic polythene. Thereafter, Weighment of the transparent plastic polythene marked as "A" containing white colour powdery substance, was conducted in the presence of witnesses and the said passenger and the gross weight of the recovered



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white colour powder was found to be *1650 grams*. Thereafter, a match-head quantity of white colour powdery substance was tested with the help of the Field Drug Detection Kit brought by the DRI officers, in the presence of witnesses and the Applicant. The powder gave positive result for the presence of '*Cocaine*' in the substance. The plastic polythene containing the powder was thus seized under N.D.P.S. Act, 1985. The *Panchnama* proceedings were drawn.

8. On the directions of the DRI officers, the Applicant communicated with Mr. David and Ms. Samira, who asked him to update after reaching Ahmedabad.

9. The Applicant has submitted that he is a Metallurgical Engineer having an impeccable background in this field for last 30 years. He had been travelling to the numerous countries to gain and share his expertise in the fields of Metallurgy. He had received a formal request *via* e-mail from a U.K.-based client, Ms. Samira seeking consultancy services for a Geological mining survey. The project site was located in Freetown, Sierra Leone, West Africa. He was also provided contact details of Mr. Usman for further co-ordination in regard to the survey. Mr. Usman then extended an invitation to the Applicant, to visit the site for Geological survey. He also undertook to sponsor all associated expenses, including travel and hotel accommodations to facilitate the execution of the survey work.

10. The Applicant travelled to Free Town, Sierra Leone from New Delhi on 03.09.2023. After reaching Freetown, he met with Mr. David, representative of Mr. Usman on 04.09.2023 at the Hotel and the contact number was provided by Mr. Usman. The Applicant thereafter, visited the



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mining site in the forest area where the technical drilling team collected the sample of the ores.

11. After completing Geological survey work, the Applicant returned to Delhi on 19.09.2023 when he was intercepted by the DRI Officials along with his baggage. The Applicant further asserted that the DRI Officials asked the Applicant to go through the X-Ray Scanner Machine along with his baggage and backpack, which he refused. Furthermore, the Applicant categorically refused to claim ownership of the brown trolley bag; despite his refusal, DRI Officials coerced him alleging that the bag belonged to him, even though the luggage tag was reportedly missing.

12. The Applicant further submits that he was apprehended and due investigations were conducted by the DRI Officials. Charge-Sheet was filed in the Court and the Charges have also been framed against the Applicant.

13. The Applicant asserted that he has been falsely implicated as there is no substantive evidence to link him with the alleged offence. He has no criminal antecedents and has never been involved in any unlawful activity and always led a life of integrity.

14. The Applicant has further submitted that he is a 63 year old senior citizen suffering from various ailments despite which he was manhandled by the DRI Officials at the Airport and has been falsely implicated in this case.

15. It is further submitted that the DRI Officials forcefully handed over the brown bag to the Applicant when no such bag was carried by the Applicant. The DRI Officials have failed to provide data of the Airlines from where the tag of the bag could have been proved. No CCTV footage of the Airport where the interception of the Applicant was done, has been



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seized and the DRI has failed to provide the material evidence in terms of the footage, which could have shown the bags carried by the Applicant.

16. The Applicant has further asserted that his continued detention is unjustified, particularly given his clean records, the weak evidence against him and the conclusion of the investigations and filing of the Charge-Sheet.

17. The Applicant claims that his prolonged incarceration has severely impacted his reputation and career, causing irreparable damage. He is committed to extend the support to the judicial system and prays for grant of Bail with an undertaking to abide by whatever conditions that may be imposed.

18. Learned counsel on behalf of the Appellant has placed reliance on Sipahi Kumar vs. State of Kerala 2020 SCC OnLine Ker 25953 and Jaymangal Shah vs. State of Kerala, (2024 LiveLaw Ker 362); Devendra Singh Malik vs. State of Uttarakhand, (2023 LiveLaw (Utt) 6); Vijaysinh Chandubha Jadeja vs. State of Gujarat, (2011) 1 SCC 609; State of Rajasthan vs. Gurmail Singh, (2005) 3 SCC 59 and Union of India vs. Mohanlal, (2016) 3 SCC 379.

19. The Applicant has further submitted that the DRI Officers got his signatures on Notice under Section 50 of the N.D.P.S. Act, 1985, before conducting his personal search and also of the bag. It is claimed that the Notice served upon the Applicant was procedurally defective and in violation of the mandatory requirements of Section 50 of the N.D.P.S., Act, 1985. The provision explicitly provides that where personal search is to be conducted, accused must be informed of his right to demand that the search to be conducted in the presence of the *Nearest Magistrate or The Nearest*



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Gazetted Officer. No meaningful opportunity to exercise this right has been afforded to the Applicant; instead the DRI Officials allegedly coerced the Applicant into signing the Notice under Section 50 of the N.D.P.S. Act, 1985.

20. The reference has been made to State of Punjab vs. Baldev Singh, (1999) 6 SCC 172 wherein it has been held in unequivocal terms that non-compliance of the mandatory provisions of Section 50 would render the recovery of incriminating material as inadmissible in evidence.

21. Similarly in Arif Khan vs. State of Uttarakhand, (2018) 18 SCC 380, it is observed that the failure to inform the accused of their right to be searched in the presence of Magistrate, constitutes a serious violation of the procedural safeguards under Section 50 of the N.D.P.S. Act, 1985 and vitiate the entire proceedings.

22. In the instant case, not only Section 50 of the N.D.P.S., 1985 has not been complied with but the DRI Officials have acted coercively by forcing the Applicant, to sign the consent document. His consent was obtained by an Investigating Officer, who was neither a Gazetted Officer nor a Magistrate. The serious procedural lapses entitles the Applicant to Bail.

23. A reference has also made to Sipahi Kumar (supra) and Jaymangal Shah (supra) wherein the failure to comply with Section 50 of the N.D.P.S. Act, 1985, was considered to vitiate and invalidates the search procedure. Similar observations have been made in the Case of Devendra Singh Malik (supra).

24. It is further submitted that there are *violation of statutory mandates under Section 52A of the N.D.P.S. Act, 1985* and Standing Order No. 1/88,



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issued by the Narcotics Control Bureau (NCB), which directly affects the integrity and admissibility of the evidence. Section 52A of the N.D.P.S. Act, 1985 requires that the seized contraband to be immediately produced before the Magistrate and sampling be conducted without undue delay to preserve the evidentiary value. Clause 1.5 of the Standing Order No.1/88 provides further mandates that the seizure memo and sampling proceedings must be completed at the spot of recovery.

25. In this case, the seizure memo was not prepared on the spot nor was the sampling conducted at the time of recovery, which is clear deviation from the statutory requirements.

26. The contraband was allegedly seized on 20.09.2023 yet the Application for drawing samples under Section 52A of the N.D.P.S. Act, 1985 was filed only on 11.10.2023, resulting in an unexplained and inordinate delay of 18 days.

27. The Apex Court in Union of India vs. Mohanlal (supra) has held that any unjustified delay in filing the Application for sampling violates the procedural safeguards under the N.D.P.S. Act, 1985 and renders the prosecution's case unsustainable.

28. Additionally, the Prosecution failed to maintain a clear and unbroken chain of custody for the contraband. This omission is compounded by the fact that Section 52A of the N.D.P.S. Act, 1985 Application and the Magistrate's Order, do not document the condition or nature of the contraband at the time of sampling.



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29. In the present case, the samples were drawn on 11.10.2023 and dispatched to CRCL only on 12.10.2023, which is far beyond the mandated timeline from the alleged date of seizure on 20.09.2023.

30. Further reliance has been placed on State of Rajasthan vs. Gurmail Singh, (2005) 3 SCC 59.

31. Furthermore, the DRI Officials deposited the alleged contraband in the *Malkhana* after a delay of two days with the Officer In charge of the Godown acknowledging receipt at about 06:50 p.m. This unexplained delay in the deposit raises significant concerns about the integrity of the chain of custody, which is a critical safeguard to ensure the authenticity and reliability of evidence in Narcotics Cases.

32. Furthermore, the weight of the contraband was shown as 1650 gms at the time of alleged confiscation whereas at the time of drawing of samples before the Magistrate, the weight of contraband was 1674.5 gms, raising questions about the credibility of the procedures adopted by DRI.

33. It is further claimed that during this intervening period, contraband remained in exclusive custody of DRI Officials, creating a substantial possibility of tampering, resealing or manipulation. The DRI Officials failed to conduct videography or photography of the alleged recovery or the subsequent sampling process using the drug detection kit. These procedural aspects intended to ensure transparency and mitigate the potential for fabrication, has been emphasised by the Hon'ble Supreme Court of India, in the Case of State of Punjab vs. Balbir Singh, (1994) 3 SCC 299.

34. Similar observations have been made in the Case of Mohinder Kumar vs. State, Panaji, Goa, (1998) 8 SCC 655 and Arif Khan vs. State of



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Uttarakhand, (2018) 18 SCC 380 and State of Rajasthan vs. Daulat Ram, (1980) 3 SCC 303.

35. It is further submitted that the Applicant has made significant contributions to the field of Metallurgy and is a notable and respected figure in his profession. His arrest and detention have caused severe damage to his reputation and career, which he had built over decades because of his hard work. Continued detention would result in further irreparable harm to his professional and personal life. Continued detention of the Applicant would also not serve any public interest, as he is neither a threat to society nor likely to engage in unlawful activities.

36. Moreover, the trial has already been prolonged. There are 29 witnesses as per the Charge-Sheet. He should not be made to endure prolonged pre-trial detention, which would essentially amount to punishment without conviction. He is the primary breadwinner for his family and his prolonged detention would cause significant hardship to his family, who are innocent. He is not a flight risk and the evidence of the prosecution is weak. Denial of bail to him would be inconsistent to establish norms that favours the release of non-violent offenders pending the trial. He undertakes not to directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or DRI Officer. He undertakes not to tamper with the witnesses or the evidence in any manner.

37. *The Applicant further submits that the twin conditions for grant of Bail under Section 37 of the N.D.P.S. Act, 1985 are fully satisfied in the present case. There exist no reasonable grounds for believing that the*



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Applicant is guilty of the offence and his release on Bail, would not likely result in further commission of the offence.

38. A prayer is, therefore, made for grant of Bail.

39. *The DRI in its Reply to the Bail Application as filed before the Special Judge*, had detailed that due procedures as detailed in Section 50 and 52A of the N.D.P.S. Act, 1985, were duly complied while seizing the contraband arresting the accused and during the sampling procedure. After the Applicant was apprehended with a contraband, he was requested to further seek directions regarding delivery of bag. During the communication held with Mr. Usman, he shared a train Ticket in the name of the Applicant from Ahmedabad to Delhi dated 19.09.2013 and also shared a visiting card of a Hotel located in Delhi and instructed Applicant to stay in the said Hotel for the delivery of gift luggage. The mobile phone was switched off again *vide Panchnama* dated 19.09.2023.

40. Mobile phone of the Applicant was again opened in *Panchnama* proceedings dated 20.09.2023 and the Applicant was requested to further seek directions regarding delivery of bag. During the communication with Usman, the Applicant informed him that he has checked in Room No. 407 in the Hotel. Mr. Usman informed him that one lady, Ms. Jane would come to collect the gift luggage and would give him Rs.83,000/- equivalent to 1000 USD. On the request of Mr. Usman, the Applicant shared his photo with him so that the said lady could identify him at the Hotel. Mr. Usman further informed that the lady would be at the reception.

41. Pursuant to this communication, the Applicant was made to check in Room No. 407 of the Hotel. Ms. Samira asked about the Applicant to inform



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him after handing over of the gift. Applicant also informed that he had handed over the gift to the lady and received the amount.

42. It was further explained that a lady named, Ms. Okeke Gloria Adaobi had visited the Hotel. She was intercepted by the DRI Officers and she disclosed that she had come to the Hotel to collect the bag and to give the money to the Applicant. *Panchnama* dated 20.09.2023 was drawn at Hotel Azora, Paschim Vihar, New Delhi and the amount was seized.

43. Statements were duly recorded and the accused along with Ms. Okeke Gloria Adaobi, was arrested on 20.09.2023 at 18:00 hours and 17:40 hours respectively.

44. It is further explained that the evidence in the form of various WhatsApp Chats evidencing desperate willingness of the Applicant, to readily accept online offers made by unknown persons over the internet, have already been placed on record along with the Complaint.

45. There is nothing to show that the Applicant had any prior engagement or work experience with Ms. Samira, in the past. That is to say that the engagement of the Applicant with Ms. Samira and he readily accepting the offer made by her, were not a mere co-incidence.

46. It is further stated that the Applicant had not placed any record in regard to his visit to the mining site in forest area where the technical drilling team collected the samples of the ores. None of the chats, any conversation regarding the geological survey, sampling or any related conversation was found. Furthermore, as per the travel information received from Ethiopian Airlines *vide* e-mail dated 17.11.2023, the bag intercepted belonged to the Applicant.



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47. The WhatsApp chats already placed on record make it clear that the Applicant was asked to carry some extra luggage (gift luggage) which he was initially reluctant to carry. He did not do any work in Freetown and was idle the whole time. He negotiated fee with Mr. Usman, to carry extra luggage to India, which he brought with him and was found to carry Narcotic Drugs. He knew that the gift luggage would become a problem in his life and was liable to seizure. He knew that in order to pass through the authorities at the African Airports, he would have to give money amounting to \$3000-\$5000. He had brought such gift luggage on previous trips as well. It is further stated that had the Applicant been forced to carry some random bag by the team of DRI, as alleged by the Applicant, the conversation with Mr. Usman would not have continued to deliver the extra bag, brought by the Applicant to India. Furthermore, there was no requirement for the co-accused Mr. Okeke Adaobi Gloria @ Ms. Jane, to use a fake name just to receive a bag containing legitimate items.

48. It is further asserted that NDPS Act is a Special Act enacted specially to deal with the menace of drugs within the country. Section 37 of the N.D.P.S. Act, 1985 contains stringent conditions which includes that the person can be granted bail only if the court is satisfied that there are reasonable grounds for believing that the said accused is not guilty of the offence. The provisions of Section 37 of the N.D.P.S. Act, 1985, cannot be overlooked.

49. Reliance has been placed on the Judgment of the Apex Court in NCB vs. Mohit Aggarwal, CrI. (Appeals) No. 1001-1002/2022; Union of India vs. Md. Jamal, Criminal Appeal No. 752/2022, decided on 06.05.2022 by the



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Apex Court; Union of India vs. Rattan Mallik @ Habul, Criminal Appeal No. 137/2009, decided on 23.01.2009, decided by the Apex Court and Union of India vs. Kuldeep Singh, 2004 (2) SCC 590 wherein it has been observed that the narrow parameters of Bail under Section 37 of the N.D.P.S. Act, have to be necessarily met for the grant of Bail in the offences under N.D.P.S. Act, 1985. The length of the period of custody or that the Charge-Sheet has been filed and the trial has commenced by themselves, are not the considerations that can be treated as persuasive grounds for granting relief of Bail under the N.D.P.S. Act, 1985.

50. Learned ASJ had dismissed the Bail Application under Section 483 of the B.N.S.S., 2023 *vide* Order dated 26.11.2024 by observing that the recovered quantity of cocaine is way above the threshold of commercial quantity as Applicant was found carrying 1.675 Kgs of cocaine. There is nothing to suggest that the twin hurdles of section 37 of the N.D.P.S. Act, 1985, have been overcome by the Applicant and the Bail was dismissed.

51. **Submissions heard and the record perused.**

52. The parameters for grant of bail to an accused under the NDPS Act, 1985 have been provided in various cases by the Supreme Court. The Supreme Court in Collector of Customs v. Ahmadalieva Nodira, (2004) 3 SCC 549 has observed as under:

“6. As observed by this Court in Union of India v. Thamisharasi, (1995) 4 SCC 190, clause (b) of subsection (1) of Section 37 imposes limitations on granting of bail in addition to those provided under the Code. The two limitations are : (1) an opportunity to the Public Prosecutor to oppose the bail application, and (2) satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of



such offence and that he is not likely to commit any offence while on bail.

7. The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant of opportunity to the Public Prosecutor, the other twin conditions which really have relevance so far as the present accused-respondent is concerned, are : the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds. The expression “reasonable grounds” means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence...”

53. Further, in State of Kerala v. Rajesh, (2020) 12 SCC 122, the Supreme Court while discussing the expression ‘reasonable grounds’ has observed as below:

“20. The expression “reasonable grounds” means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for.”

54. As per the case of the Prosecution, the Petitioner was found in possession of 1.6 Kg of Cocaine which is a commercial quantity, thereby



mandating the satisfaction of the stringent twin conditions under Section 37 of the NDPS Act, 1985 which are necessarily required to be satisfied.

55. In the present case according to the prosecution, apparently there is an international drug syndicate being run for import of Cocaine, and the Applicant is a part of the same.

Non-Compliance of Section 50 of NDPS Act

56. *The first ground agitated by the Appellant for grant of Bail* is that there is *non-compliance of Section 50 of the NDPS Act*, since no prior intimation was given to the accused about his right of conduct of search in the presence of a Gazetted officer and that his signature was obtained through coercion by DRI officers.

57. In the case of *State of Punjab v. Baldev Singh* (supra) has observed that if any Officer on the basis of an information, without any prior permission as contemplated under the provisions of the NDPS Act, makes a search or cause arrest of a person during the normal course of investigation into an offence or suspected offence as provided under the provisions of Cr.P.C.; and on completion of such search, a contraband under the NDPS Act is recovered, the requirement of Section 50 of the NDPS Act is not attracted and the question of complying with the requirements thereunder would not arise.

58. Also, in *State of H.P. v. Pawan Kumar*, (2005) 4 SCC 350 the Apex Court was considering a situation where the contraband was seized from the bag of the Applicant and not his person, held that Section 50 is not applicable when the search is made of the bag being carried by the person.



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Further, it has been held that the phrase “*search any person*” as described in Section 50 would not include the bag which was being carried by the individual and therefore, recovery of narcotics from the bag of the accused would not attract the provisions of Section 50 of the NDPS Act. The Court held that the term “*person*” under Section 50 of the NDPS Act would mean a natural person or a living unit and not an artificial person i.e., a bag or a briefcase.

59. *In the present case*, it cannot be overlooked that the recovery of the illicit substance was from Applicant’s *brown colour trolley bag* which contained a hard plastic sheet affixed with the help of screws on the four wall-sides of the lower portion of the trolley bag i.e. a false bottom to conceal the substance. Further, at the time the Applicant was apprehended, Notice under Section 50 of the N.D.P.S. Act, 1985 was given and the Applicant was informed about the requirement of his personal search and of the baggage carried by him. He was also apprised about his legal rights, about his personal search and the search of bags, which could be conducted in the presence of Magistrate or Gazetted Officer, to which the Applicant gave his written consent in writing on the body of the Notice itself that the personal search and search of the backpack may be conducted by the DRI officials. Further, at this stage, there cannot be minute scrutiny about the correctness of the procedure alleged to have been not followed and it can be considered only during trial.

60. *The next ground agitated by the Appellant for grant of Bail* is that there is *non-compliance of Section 52A of the NDPS Act* as the seizure memo was not prepared on the spot nor was the sampling conducted at the



time of recovery, which is clear deviation from the statutory requirements under the NDPS Act.

61. The Apex Court in its recent judgement Narcotics Control Bureau v. Kashiv 2024 INSC 1045 dated 20.12.2024 had observed as follows:

“(iii) The purpose of insertion of Section 52A laying down the procedure for disposal of seized Narcotic Drugs and Psychotropic Substances, was to ensure the early disposal of the seized contraband drugs and substances. It was inserted in 1989 as one of the measures to implement and to give effect to the International Conventions on the Narcotic drugs and psychotropic substances.

(iv) Sub-section (2) of Section 52A lays down the procedure as contemplated in sub-section (1) thereof, and any lapse or delayed compliance thereof would be merely a procedural irregularity which would neither entitle the accused to be released on bail nor would vitiate the trial on that ground alone.

(v) 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.

(vi) Any lapse or delay in compliance of Section 52A by itself would neither vitiate the trial nor would entitle the accused to be released on bail. The Court will have to consider other circumstances and the other primary evidence collected during the course of investigation, as also the statutory presumption permissible under Section 54 of the NDPS Act.”

62. Therefore, whether there is a substantial compliance of Section 52A of the NDPS Act, is a matter of trial.



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63. The Applicant has also sought Bail on the ground of *delay in conclusion of trial*. He has been arrested on 28.09.2023 and since then, the Charge-Sheet has already been filed and the Charges have been framed on 02.08.2024. The evidence of the Prosecution is being recorded and on the last date of hearing adjournment was sought by Counsel for the Applicant before Spl. Judge, NDPS contributing to the delay. However, the Matter is fixed for Prosecution evidence on 20.03.2025. At this stage, it cannot be said that there is a delay of any nature, which would entitle the Applicant to Bail.

64. There are serious charges of carrying commercial quantity of Cocaine from abroad to India for handing over to the third persons, as a part of International Drug Syndicate. Learned ASJ has rightly observed that the stringent *twin conditions of Section 37 of the N.D.P.S., 1985, are not met in the present case* since there is nothing to show that the offence has not been committed by the Applicant in the light of overwhelming evidence collected against him by the DRI and also the circumstances do not justify any conclusion that he would not commit the offence again, if admitted to Bail.

65. There is no ground for grant of Bail and the Bail of the Applicant is, therefore, rejected.

66. The Petition is disposed of accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

MARCH 05, 2025/RS