



2025:DHC:11527



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
% *Date of Decision: December 17<sup>th</sup>, 2025*

+ **BAIL APPLN. 4890/2025 & CRL.M.A. 37745/2025**  
**CHRISTINA KATUSHABE**  
**AYEBALE**

.....Applicant  
Through: Ms. Tanya Kushwaha,  
Adv. (through VC)

versus

**CUSTOMS** .....Respondent  
Through:

**CORAM:**  
**HON'BLE MR. JUSTICE AMIT MAHAJAN**

**AMIT MAHAJAN, J. (Oral)**

1. The present application is filed by the applicant seeking regular bail in Complaint No. VIII(AP)/(10)/P&I/3448-C/Arrival/2022 registered by Customs for the offences under Sections 8/21/23/28 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('**NDPS Act**').

2. The brief facts are that on 18.04.2022, on the basis of secret information the applicant was intercepted at Indira Gandhi International Airport by the customs authority.

3. It is alleged that during the search of the applicant 12 capsules were recovered and thereafter the applicant admitted of ingesting capsules containing contraband, pursuant to which the applicant was taken to Dr. Ram Manohar Lohia Hospital and 55 capsules were recovered from the applicant.

4. It is alleged that a total of 67 capsules were recovered from

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the applicant and the were confirmed to be Heroin weighing 664 grams. After her formal hospitalization from 18.04.2022 to 23.04.2022 the applicant was arrested on 24.04.2024.

5. The learned counsel for the applicant submits that the applicant had been illegally detained in the hospital from 18.04.2022 to 23.04.2022. She submits that the applicant was not produced before the concerned Magistrate within a period of 24 hours and was thereafter formally arrested on 24.04.2022.

6. She submits that there is non-compliance of Section 50 of the Code of Criminal Procedure, 1973 ('CrPC') since the applicant was not provided the grounds of arrest in writing.

7. She submits that the applicant was arrested on 24.04.2022 and has been in custody since then. She submits that only 2 out of 36 witnesses have been examined and the trial is not likely to conclude in the near future.

8. I have heard the learned counsel for the applicant 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.

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10. The quantity of contraband recovered in the instant case is commercial quantity. 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.”*

11. The allegations in the present case are regarding 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.



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12. In the present case, the applicant was arrested and a recovery of 12 capsules was made at the time of her personal search and further 55 capsules were recovered from the body of the applicant.

13. The learned counsel for the applicant argued that the applicant had been illegally detained in the hospital on 18.04.2022 to 23.04.2022 and was not produced before the Magistrate withing 24 hours.

14. It is pertinent to note that the applicant in the present case herself had admitted that she had ingested 55 capsules and had also admitted to undergo medical procedure for the removal of the same.

15. In the opinion of this Court, once the applicant herself had admitted to undergo medical procedure for the removal of the contraband which is a delicate procedure and can take some time to ensure safety of the patient, the contention of the applicant that she was illegally detained in the hospital is bereft of any merit.

16. The learned counsel for the applicant argued that the applicant at the time of her arrest was not supplied the grounds of arrest in writing.

17. The Hon'ble Apex Court in the case of *State of Karnataka v. Sri Darshan* : 2025 SCC OnLine SC 1702 has clarified that while the procedural mandate of supply of written grounds is mandatory, however, the mere absence of the same does not render the arrest illegal unless the accused is prejudiced due to denial of fair opportunity. The arrest in the present case was made way back on 24.04.2022. Pursuant to the said arrest, the



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charges have also been framed after hearing the arguments on behalf of the applicant. No prejudice can be held to have been caused to the applicant after more than three years of her arrest when concededly, she is being represented by a counsel before the learned Trial Court.

18. In the opinion of this Court, the present applicant has not been able to satisfy on the twin conditions as stipulated in Section 37(1)(b) of the NDPS Act and there are reasonable grounds to believe that the applicant is guilty of the alleged offence.

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

20. The present bail application is therefore dismissed. Pending application also stands disposed of.

21. 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**

**DECEMBER 17, 2025**

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