

Navnath Waghmare (RA)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 5475 OF 2024

Lilian Awour Nayamanga ...Applicant
Versus
State Of Maharashtra ...Respondent

Ms. Afreen Shaikh, Noor Saba Shaikh, Nikhat Shaikh for the Applicant.
Ms. S.K. Gajare APP for the State
Ms. Megha Bajoria, SPP, UOI Customs for Respondent No.2.

CORAM: R. M. JOSHI, J.

PC:- RESERVED ON 13th MARCH, 2026
PRONOUNCED ON 18th MARCH, 2026

1. By this application, applicant seeks bail in connection with CR No. SD/INT/AIU/346/2022-AP 'B' offence under Sections 8(c), r/w 21(c), 23(c), 27, 27(A) & 28 and 29 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (for short '**NDPS Act**').

2. It is a case of the prosecution that Customs, Air Intelligence Unit, Chatrapati Shivaji Maharaj International Airport, Sahar, Mumbai on 30.09.2022 cleared herself through customs green channel and was proceeding towards exit gate, at that time suspicion was raised by the authorities. Hence, panchas were called and search was taken of the trolley bag of the applicant. In

the false cavity of the said bag one brown coloured plastic pouch was found. Since personal search was sought to be taken, she was given notice under Section 50 of the NDPS Act, however, in her personal search nothing was found. In a brown coloured plastic pouch carried by her in a trolley bag 5168 grams, (over 5 kg.) heroin was found which came to be seized. After conclusion of investigation chargesheet has been filed against the applicant.

3. Learned counsel for the applicant submits that there is break in the chain of events from the search of the trolley bag of the applicant and recovery of alleged contraband. It is further submitted that the applicant being lady, could not have been arrested after sun-set and as such, her arrest is illegal. It is further contended that she was not intimated about her right to be searched before the lady gazetted officer or Magistrate, as contemplated by Section 50 of the NDPS Act. On these among other contention, it is submitted that the rigors of Section 37 of the Act, would not apply to the instant case.

4. Learned counsel for the APP opposed the said contentions submitting that herein this case huge quantity of contraband heroin is seized from the applicant's bag. It is submitted that since recovery is not from the person of the applicant, question of non-compliance of Section 50 of the Act does not arise. It is further argued that, during the course of the search, it was found that the applicant was carrying contraband and hence, further action of her arrest is done in exceptional circumstances. It is submitted that having regard to the quantity of contraband seized at her instance,

the statutory embargo created by Section 37 of the Act, would apply to the present case.

5. *Prima-facie*, persual of the record indicates that this is not a case wherein any prior intimation/information was received by the authorities in respect of any contraband being carried by the applicant, but on mere suspicion baggage of the applicant was searched. Apparently the search has been taken in presence of panch witnesses. In the said search, purported contraband heroin to the extent of 5kg, was found. From CA report it is confirmed that the said contraband is narcotic substance heroin. Needless to say, that this is a commercial quantity which was carried by the applicant in her baggage. Since the recovery is not done from the person of the applicant, this Court is not required to consider compliance or non-compliance of Section 50 of the Act at this stage. Insofar as the claim of the applicant with regard to her arrest after sun set is concerned, during the course of the search, huge contraband was found in possession of the applicant and therefore the circumstances, on the face of it were exceptional in nature. Apart from this, court finds that apparently, the requirement of law for the purpose of search and seizure are duly followed.

6. In view of this facts, applicant has failed to make out any case for grant of bail.

7. Hence, Application stands dismissed.

(R. M. JOSHI, J.)