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

+ **BAIL APPLN. 134/2026**

KELVIN ABOAGYE

.....Petitioner

Through: Ms. Sushma Sharma, Mr. Girish Kumar Sharma, Mr. Dhruv Kumar Sharma, Ms. Aayushi Gaur, Mr. R, Sahil and Ms. Stuti Aggarwal, Advocates.

Versus

NARCOTIC CONTROL BUREAU

.....Respondent

Through: Mr. Arun Khatri, SSC for NCB.

CORAM:

HON'BLE DR. JUSTICE SWARANA KANTA SHARMA

ORDER

06.05.2026

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1. By way of the present application, the applicant is seeking grant of regular bail in case out of complaint case No. VIII/58/DZU/2020, registered at Police Station NCB, Delhi for the commission of offence punishable under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereafter '*NDPS Act*').
2. Briefly stated, the facts of the present case are that on 18.12.2020, Sh. R.K. Maurya, Intelligence Officer, NCB, Delhi Zonal Unit, received specific information that an African national, Kelvin Aboagye, residing at R-3/58, First Floor, Nawada Housing Complex, Uttam Nagar, New Delhi, was involved in drug trafficking. The information was reduced into writing and



placed before the Superintendent, who directed immediate action. Acting on these directions, a team led by Intelligence Officer Sh. Chetan Sharma conducted a raid at the said premises in the presence of independent witnesses. During the search, a carton box containing clothes was recovered. Nine ladies' kurtis were found, the buttons of which appeared suspicious. Upon examination, the buttons were found to contain small packets of off-white powder concealed inside. Field testing confirmed the substance to be heroin. A total of 463 buttons from the Kurtis were opened, all of which contained a similar substance. The total recovered contraband weighed 290 grams and was seized on the spot. A notice under Section 67 of the NDPS Act was served upon Kelvin Aboagye, directing him to appear before the NCB officials. On 19.12.2020, he appeared and gave a voluntary statement, admitting that the parcel containing heroin had been sent by his brother from Johannesburg, South Africa, and that he had been promised ₹5,000 for extracting the heroin. Based on the recovery and his statement, Kelvin Aboagye was arrested on 19.12.2020 under Sections 8 and 21 of the NDPS Act.

3. The learned counsel appearing on behalf of the applicant states that the applicant has been falsely implicated in the present case. It is further submitted that the applicant has been in judicial custody for about 5 years and 3 months; however, the trial has not yet concluded. The learned counsel further points out that out of 10 prosecution witnesses, only 7 have been examined. It is also contended that the applicant has no prior criminal antecedents. Accordingly, it is prayed that the applicant be enlarged on regular bail.



4. The learned SSC for the NCB, on the other hand, does not dispute that the accused has no criminal antecedents. It is argued that the accused is a foreign national and the recovery is of commercial quantity of narcotic substance. It is therefore stated that since the bar of Section 37 of the NDPS Act is attracted and the applicant is at flight risk, therefore, it is prayed that the bail application be rejected.
5. This Court has **heard** arguments addressed on behalf of the learned counsel appearing for the applicant and the learned APP for the State and has perused the material available on record.
6. This Court notes that the applicant/accused has been in judicial custody as an under-trial for about 5 years and 3 months, and his jail conduct during the last one year has been reported to be satisfactory. Despite the matter being at an advanced stage before the learned Trial Court, three prosecution witnesses still remain to be examined, and the trial is likely to take time to conclude.
7. This Court further notes that although the recovery of narcotic substance in the present case is of commercial quantity and the rigours of Section 37 of the NDPS Act are attracted, the same, in the facts and circumstances of the present case, cannot be treated as an absolute bar to the grant of bail, particularly when the applicant has remained in judicial custody for a prolonged period of time. The prolonged period of incarceration, coupled with the delay in the conclusion of the trial, constitutes a significant ground for consideration of bail.
8. This Court notes that the applicant was arrested on 19.12.2020 and has been in judicial custody for about 5 years and 3 months. Further, the applicant is facing trial in a case where he has been accused of commission



of offences under Sections 21 and 8 of the NDPS Act. This Court notes that the punishment prescribed under these provisions is rigorous imprisonment for a term which shall not be less than ten years but may extend to twenty years, alongwith fine. The Hon'ble Supreme Court in ***Supreme Court Legal Aid Committee (Representing undertrial prisoners) v. Union of India: (1994) 6 SCC 731***, has held as under:

“15. ...We, therefore, direct as under:

(i) Where the undertrial is accused of an offence(s) under the Act prescribing a punishment of imprisonment of five years or less and fine, such an undertrial shall be released on bail if he has been in jail for a period which is not less than half the punishment provided for the offence with which he is charged and where he is charged with more than one offence, the offence providing the highest punishment. If the offence with which he is charged prescribes the maximum fine, the bailamount shall be 50% of the said amount with two sureties for like amount. If the maximum fine is not prescribed bail shall be to the satisfaction of the Special Judge concerned with two sureties for like amount.

(ii) Where the undertrial accused is charged with an offence(s) under the Act providing for punishment exceeding five years and fine, such an undertrial shall be released on bail on the term set out in (i) above provided that his bail amount shall in no case be less than Rs 50,000 with two sureties for like amount.

(iii) Where the undertrial accused is charged with an offence(s) under the Act punishable with minimum imprisonment of ten years and a minimum fine of Rupees one lakh, such an undertrial shall be released on bail if he has been in jail for not less than five years provided he furnishes bail in the sum of Rupees one lakh with two sureties for like amount.

(iv) Where an undertrial accused is charged for the commission of an offence punishable under Sections 31 and 31-A of the Act, such an undertrial shall not be entitled to be released on bail by virtue of this order.

The directives in clauses (i), (ii) and (iii) above shall be subject to the following general conditions:

(i) The undertrial accused entitled to be released on bail shall deposit his passport with the learned Judge of the Special Court concerned and if he does not hold a passport he shall file an affidavit to that effect in the form that may be prescribed by the learned Special Judge. In the latter case the learned Special Judge



will, if he has reason to doubt the accuracy of the statement, write to the Passport Officer concerned to verify the statement and the Passport Officer shall verify his record and send a reply within three weeks. If he fails to reply within the said time, the learned Special Judge will be entitled to act on the statement of the undertrial accused;

(ii) the undertrial accused shall on being released on bail present himself at the police station which has prosecuted him at least once in a month in the case of those covered under clause (i), once in a fortnight in the case of those covered under clause (ii) and once in a week in the case of those covered by clause (iii), unless leave of absence is obtained in advance from the Special Judge concerned;

(iii) the benefit of the direction in clauses (ii) and (iii) shall not be available to those accused persons who are, in the opinion of the learned Special Judge, for reasons to be stated in writing, likely to tamper with evidence or influence the prosecution witnesses;

(iv) in the case of undertrial accused who are foreigners, the Special Judge shall, besides impounding their passports, insist on a certificate of assurance from the Embassy/High Commission of the country to which the foreigner-accused belongs, that the said accused shall not leave the country and shall appear before the Special Court as and when required; (v) the undertrial accused shall not leave the area in relation to which the Special Court is constituted except with the permission of the learned Special Judge;

(vi) the undertrial accused may furnish bail by depositing cash equal to the bail amount;

(vii) the Special Judge will be at liberty to cancel bail if any of the above conditions are violated or a case for cancellation of bail is otherwise made out; and

(viii) after the release of the undertrial accused pursuant to this order, the cases of those undertrials who have not been released and are in jail will be accorded priority and the Special Court will proceed with them as provided in Section 309 of the Code...”

9. This Court also takes note of the fact that the accused has no criminal antecedents.

10. Considering the overall facts and circumstances of the case, this Court is inclined to grant regular bail to the present accused/applicant on furnishing a personal bond in the sum of Rs. 1,00,000/- (Rupees One Lakh)



with one surety of like amount to the satisfaction of the Trial Court/ Duty Magistrate/ Link Magistrate/ Successor Court, on the following terms and conditions:

- a) The applicant shall deposit his Passport with the learned Trial Court and shall not leave the country;
 - b) The learned Trial Court shall ensure that the certificate of assurance from the High Commission of Nigeria, duly verified, is placed on record that the applicant shall not leave the country;
 - c) The applicant shall not leave NCT of Delhi, except with the prior permission of the learned Trial Court;
 - d) The applicant shall appear before the learned Trial Court as and when the matter is taken up for hearing;
 - e) The applicant shall provide his address to the learned Trial Court by way of an affidavit, and in case of any change in address, he shall promptly inform the same to the concerned Court.
 - f) The applicant shall provide his mobile number to the Investigating Officer concerned, which shall be kept in working condition at all times, and he shall not switch off or change the mobile number without prior intimation to the IO concerned;
 - g) The applicant shall report at the concerned Police Station once a week, on Wednesday, between 10:00 and 11:00 am;
 - h) The applicant shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, or tamper with the evidence of the case.
11. Accordingly, the present application stands allowed and disposed of.
 12. A copy of this order be forwarded to the learned Trial Court.



13. It is, however, clarified that nothing expressed hereinabove shall tantamount to an expression of opinion on merits of the case.

14. The order be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

MAY 06, 2026/zp/ap