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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 473/2026**
VINCENT EMEKA OKOYEPetitioner
Through: **Mr. J.S. Kushwaha and Ms. Tanya**
Kushwaha, Advocates

versus

CUSTOMSRespondent
Through: **Mr. Shubham Tyagi, Sr. Standing**
Counsel for CBIC

CORAM:
HON'BLE MR. JUSTICE MANOJ JAIN

ORDER

21.04.2026

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1. Applicant seeks regular bail in case¹ registered against him for commission of offences 8/21/23/29 of *NDPS Act*².
2. As per prosecution's case, there was a specific input with the Customs and based on such input, surveillance was mounted. The applicant, a holder of passport issued by *Republic of Nigeria*, arrived at India from Flight No. ET688 on 10.06.2024 and when he crossed green-channel, he was intercepted, while he was moving towards the exit gate.
3. The secret information was to the effect that he was carrying prohibited narcotic drug/ psychotropic substance. When asked, he denied carrying any such contraband and even scanning of his baggage, through x-ray machine, did not indicate anything objectionable. He was then taken to '*Customs Prevention Room*' located at International Arrival Hall for further physical examination of his baggage and for conducting personal search and was served with notice under Section 102 of *Customs Act, 1962* and notice under

¹ Complaint/File No. VIII (AP) 10/P&I/4963-A/ARRIVAL/2024, registered at P.S. Customs (T3 Airport), Delhi

² *Narcotics Drugs and Psychotropic Substances Act, 1985*



Section 50 of *NDPS Act* and was apprised about his legal rights. He volunteered for his search to be conducted by any customs official.

4. Such search also did not yield anything suspicious from his possession and, thereafter, he, voluntarily, admitted that he had ingested some pellets/capsules containing narcotic drug/psychotropic substance. He was accordingly asked to voluntarily eject the same and *26 oval shaped capsules* were recovered. Since information was with respect to concealment of further narcotic substance in the body, when served with notice under Section 103 of *Customs Act, 1962*, he consented for medical procedure for ejection of such pellets/capsules. He was then taken to Safdarjung Hospital and during his stay at Safdarjung Hospital, *10 more capsules* were recovered.

5. These were eased out by him on 11.06.2024, 13.06.2024 and 28.06.2024.

6. He was discharged from the hospital on 30.06.2024. The contraband in question was found to be *cocaine* and the total weight of contraband, contained in 36 capsules, was found to be 648 grams.

7. Statement under Section 67 *NDPS Act* was recorded on 01.07.2024 and on the same day, he was arrested and was produced before the learned Trial Court on 01.07.2024.

8. Learned counsel for the applicant, *inter alia*, submits that since the applicant had already been apprehended on 10.06.2024 and since 26 capsules had been recovered from him, then and there, the offence, relatable to the aforesaid recovery, was complete, and, therefore, the applicant should have been produced before the concerned Magisterial Court within 24 hours and without there being any order given by the concerned Magisterial Court or its knowledge, he was kept in illegal custody at Safdarjung Hospital and was,



eventually, arrested on 01.07.2024. He submits that the accused had already been intercepted and recovery had been made at the Airport itself and, therefore, he ought to have been produced before the Magistrate, immediately. On the contrary, he was taken to Safdarjung Hospital and was kept under detention there in illegal and unlawful manner till 30.06.2024 and such detention is in violation of Article 22(2) of the *Constitution of India* read with Section 58 of *BNSS*³. It is also contended that the period of twenty-four hours is required to be reckoned from the time when the liberty of the accused stood curtailed and not from the time when the arrest was formally shown on 01.07.2024. Learned counsel for the applicant places reliance upon *Habiob Bedru Omer v. Customs*, 2025 SCC OnLine Del 4263, *Kitoko Ngiembo Alain Vs Customs* 2026: DHC: 1338 and *Directorate of Enforcement v. Subhash Sharma* 2025 INSC 141.

9. He contends that the trial is underway and the applicant has no previous antecedents of any nature whatsoever, and even otherwise, given the snail's pace of the trial as only one witness, out of thirty eight cited witnesses, has been examined so far, and, therefore, there is no likelihood of trial concluding in near future, which makes him entitled to be released on bail.

10. Learned Senior Standing Counsel for Customs, while opposing the bail *plea* of the applicant, submits that the applicant is a foreign national with no permanent roots in India and is a flight risk, and therefore, the Court must not employ liberal approach in cases involving seizure of contraband of commercial quantity. It is contended that liberal approach in NDPS matters involving commercial quantity is not permissible and moreover, there was due compliance of all the relevant provisions and it was only when the

³ Bharatiya Nagarik Suraksha Sanhita, 2023



applicant had, after comprehending all the relevant notices, volunteered his admission in the hospital, he was taken to the hospital, and thereafter, when he was discharged, he was immediately produced before the learned Court for remand purpose. Reliance has been placed upon *Achint Navinbhai Patel v. State of Gujarat*, (2002) 10 SCC 529; *Supdt., Narcotics Control Bureau, Chennai v. R. Paulsamy*, (2000) 9 SCC 549; *State of M.P. v. Kajad*, (2001) 7 SCC 673; *State of Punjab v. Balbir Singh*, (1994) 3 SCC 299; *State of Gujarat v. Salimbhai Abdulgaffar Sheikh & Ors.*, (2003) 8 SCC 50; *State through Secretary, Central Narcotic Department, Lucknow v. Syed Amir Hussain*, (2002) 10 SCC 88; *Babu alias Tazmul Hossain v. State of Orissa*, 2001 AIR SCW 682 (SC); *Union of India v. Aharwa Deen*, 200 VI AD (SC) 155; *Union of India v. Ram Samujh*, (1999) 9 SCC 429; *Union of India v. Thamisharasi & Ors.*, 1995 SCC (Crl.) 665 (SC); *Heera Lal v. State*, 2003 (2) CC Cases (DHC) 170; *Md. Ahshan v. The State (NCT of Delhi)*, 2004 (1) JCC 13; *Mohd. Ashmahil @ Mohd. Ismail @ Iqbal Bhai v. NCB-Crl.* In M(M) No.354/2002 (DoD 15.04.2002); *Sanjeev Kumar v. NCB* In Crl.Misc.(M) No.3962/2002 (DoD 17.02.2003); *Sakib @ Sakibchana S/O Faridmiya Shaikh v. State of Gujarat* 2025 Supreme(Online)(GUJ)2523.

11. I have given my thoughtful consideration to the rival contentions and perused the material and precedents cited at the Bar.

12. Indubitably, the contentions regarding alleged violations would be appropriately answered during the trial only.

13. Fact remains that an identical situation had arisen before this Court in *Kitoko Ngiembo Alain* (supra) in which also, a foreign national had landed in India and on the basis of intelligence input when the said accused was searched, 19 numbers of capsules/pellets were extracted. Such extraction took



place on 20.02.2022 and thereafter, on the basis of reply given by the accused therein to notice under Section 103 Customs Act, 1962, he was taken to RML Hospital where he eased out 54 more capsules. Eventually, after his discharge on 24.02.2022, he was produced before the Court on 25.02.2022. While granting bail to said accused, the following observations were made by this Court:-

“20. Learned counsel for the applicant strongly relies upon Habiob Bedru Omer v. Customs, 2025 SCC OnLine Del 4263. In said recent case, almost of similar nature, though no recovery took place at the Airport itself, the concerned accused when taken to Safdarjung Hospital, 75 capsules containing contraband were recovered from him. Further requisite action was taken after his discharge from Safdarjung Hospital and the arrest was also ‘post-discharge’ and when the abovesaid aspects were brought to knowledge of the Court, while granting bail, learned Coordinate Bench observed as under:-

27. In the present case, admittedly, the documents of the respondent shows that there was specific intelligence/prior information with regard to the arrival of the present applicant with the contraband. It is, however, the case of the respondent in the complaint filed before the learned Special Court that the applicant was intercepted on the basis of suspicion/profiling. The sequence of events and record would reflect that from the very interception, the respondent had reasons to believe that the applicant was carrying the contraband recovered. In these circumstances, it was incumbent upon the concerned Officer to comply with the provisions of the NDPS Act. Admittedly, there has been no such compliance and the respondent proceeded to detain the applicant without complying with the aforesaid procedure. The respondent was bound to comply with the aforesaid provisions from the time the applicant was intercepted at the IGI Airport. In any case, when the first set of capsules were seized by panchnama dated 21.05.2023, the respondent was bound to act in accordance with the provisions of the NDPS Act. It is pertinent to note that the report under Section 57 of the NDPS Act was sent only on 26.05.2023.

28. The applicant was in the continuous custody of the respondent from 21.05.2023 till 26.05.2023 without any authorisation. “Handing Over” and “Taking Over” memos annexed with the complaint leaves no manner of doubt that the custody of the applicant was being transferred from one Officer to the other on the basis of the rotational duties. Thus, in the opinion of this Court, such custody without any authority and without producing him before the concerned Magistrate or Special Court within 24 hours in accordance with law is completely illegal. Even if the applicant was under medication for the procedure being carried out, the



same cannot be a ground to keep him in custody. Magistrates exercising power of remand or otherwise in respect of persons in hospital is not unheard of and well recognised procedure in law.

*29. Thus, the respondent without producing the applicant within 24 hours of his detention continued to keep him in Safdarjung Hospital till his final arrest on 26.05.2023. In view of the above, this Court holds that the applicant was kept in illegal custody by the respondent from 21.05.2023 to 25.05.2023. His arrest on 26.05.2023 stands vitiated. In terms of the judgment of Hon'ble Supreme Court in **Subhash Sharma (supra)**, rights of the applicant guaranteed under Articles 21 and 22 of the Constitution of India have been violated, and therefore, he has to be released on bail despite the restrictions provided under Section 37 of the NDPS Act. The applicant has been in judicial custody since the date of his formal arrest, i.e., 26.05.2023, and has undergone incarceration for more than 2 years as of today."*

21. Herein, admittedly, 19 capsules had been recovered immediately after the interception, when the applicant was taken to the toilet of IGI Airport itself. The contraband contained in 19 capsules, suspected to be cocaine, was seized, and thus offence stood revealed, then and there. In such a situation, the applicant should have been arrested immediately and produced before the Court, even if further recovery was to be affected. Thereafter, Customs, as per order of the Court, could have taken him to hospital for further easing out of capsules. In case, delay in hospitalization had any potential of resulting in health-hazard for the applicant, remand could have taken at the hospital also, by making appropriate request to the Court to come to the hospital for said purpose. Thus, applicant was, apparently, detained without any authorization, particularly when part-recovery had already taken place at Airport and offence stood revealed. Respondent cannot be absolved merely on the pretext that formal arrest was later. Thus, palpably, the applicant remained in illegal custody of Customs from the date of interception till 25.02.2022."

14. It was thus observed that once the contraband had been recovered at the Airport itself, the accused should have been arrested immediately and should have been produced before the concerned Court even if further recovery was to be effected and resultantly, it was held that the applicant remained in illegal custody of Customs from the date of interception till he was produced before the Court.

15. Situation is almost similar here, too.

16. Admittedly, 26 capsules, containing *cocaine*, had been recovered at the Airport itself.



17. In such a situation, the applicant should have been arrested immediately and produced before the Court, even if further recovery was to be affected. As noted already, thereafter, Customs, as per order of the Court, could have taken him to hospital for further easing out of capsules. In case, of any health hazard, remand could have taken at the hospital also, by making appropriate request to the Court to come to the hospital for said purpose. Thus, the applicant remained in illegal custody of Customs from the date of interception at the Airport i.e. on 10.06.2024 till 01.07.2024.

18. Learned counsel for the respondent-Customs relies upon *Lydia Kabukazi Aloyo v. Customs* (in BAIL APPLN.1429/2025) 2025:DHC:11877. However, the facts therein are distinguishable, as in that case, admittedly, no contraband was recovered at the Airport.

19. As per Nominal Roll, the applicant, is in custody since the date of his arrest i.e. 01.07.2024 and has no previous involvement in any other case. There is no likelihood of completion of trial in near future. When it comes to somebody's life and liberty, Article 21 of the *Constitution of India* must override and prevail over the statutory embargo created under Section 37 of *NDPS Act*. Reference be made to *Rabi Prakash v. State of Odisha*: 2023 SCC OnLine SC 1009, *Naeem Ahmed Alias Naim Ahmad vs. Govt. of NCT of Delhi*, 2024 SCC OnLine SC 220, *Mohd. Muslim v. State (NCT of Delhi)*, 2023 SCC OnLine SC 352, *Man Mandal & Anr. vs. The State of West Bengal*, 2023 SCC OnLine SC, *Dheerai Kumar Shukla v. State of U.P.*, 2023 SCC OnLine SC 918, *Badsha Sk. V. State of W.B.* 2023 SCC OnLine SC 1867, *Zakir Hussain v. State (Govt. Of NCT of Delhi)* 2025 SCC OnLine Del 253, and *Vinay Sharma v. State (NCT of Delhi)*: 2025 SCC OnLine Del 5137.



20. Keeping in mind the overall facts of the case, the applicant is, hereby, directed to be released on bail on his furnishing personal bond in a sum of Rs. 25,000/- with one '*local*' surety of like amount, subject to the satisfaction of learned Trial Court/CMM/Duty Magistrate with the following conditions:-

- (i) The address, where the applicant would be residing after his release, shall be revealed in advance and the learned Trial Court will be at liberty to get the same verified, before accepting the bonds.
- (ii) The applicant shall report to the concerned IO, first Sunday of every month at 10:00 AM, till the trial is concluded.
- (iii) The applicant shall not leave the National Capital Region of Delhi, without prior permission of learned Trial Court.
- (iv) The applicant shall not try to contact and influence any witness, directly or indirectly.
- (v) He shall provide one Mobile Number to the concerned I.O and shall ensure that his such Mobile Number remains active and operational, till the disposal of the case by the learned Trial Court.

21. Any violation of the above conditions shall invite cancellation of bail.

22. Needless to state, nothing observed hereinabove shall amount to final expression on the merits of the case.

23. The application stands allowed and disposed of, along with pending application(s), if any.

24. Let a copy of this order be sent to the concerned Court and also to the Jail Superintendent for necessary information and compliance.

MANOJ JAIN, J

APRIL 21, 2026/dr/sa