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

+ **BAIL APPLN. 1022/2026**

ARINZE HILLARY ALI

.....Petitioner

Through: Mr. Meghan, Mr. Mukul Gupta,
Advocate.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Yudhvir Singh Chauhan, APP
with SI Ravinder.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

27.04.2026

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1. By way of this application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ["BNSS"], the applicant seeks regular bail in connection with FIR No. 1497/2023 dated 01.12.2023, registered at Police Station Nihal Vihar, Outer District, Delhi, under Section 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 ["the NDPS Act"].

2. I have heard Mr. Meghan, learned counsel for the applicant, and Mr. Yudhvir Singh Chauhan, learned Additional Public Prosecutor. The status report filed by the prosecution is also on record.

3. The prosecution case, as detailed in the status report, is that a secret information was received on 01.12.2023, that a person of African origin namely Hillary, would be arriving at 50 Feet Road, opposite Nilothi, Dilip Vihar, Nihal Vihar, Delhi, at around 11:30 AM to supply



amphetamine/MD. A raiding team was constituted, and the applicant was apprehended at about 11:10 AM, when he arrived on a scooty. The applicant attempted to throw away a polythene packet, which he removed from his pocket, but was restrained by the raiding team. The packet was found to contain an off-white crystal substance, which was tested with the field testing kit, and found to be amphetamine, weighing approximately 60 grams. The polythene bag was kept in a transparent plastic box and sealed, whereupon the FIR was registered. The sample was taken, following the procedure under Section 52A of the NDPS Act, on 05.01.2024, and was sent to the Forensic Science Laboratory [“FSL”] for examination on 16.01.2024. The FSL report confirmed that the substance was “*Methamphetamine*”. The chargesheet has since been filed.

4. In support of the present application, Mr. Meghan submits that the applicant has been in custody for a period of almost two years and five months. Although charges have been framed, prosecution evidence has not yet commenced. Thirteen witnesses have been cited in the chargesheet, which makes it likely that the trial will take significant time.

5. Mr. Meghan further submits that, although the alleged recovery was of a commercial quantity of amphetamine [being over 50 grams], the seizure was neither in the presence of any independent witnesses, nor was it photographed or videographed. He relies upon the judgments of this Court in *Bantu v. State Govt. of NCT of Delhi*¹, and *Sunday Okeke Ugwuoke v. State of NCT of Delhi*² to submit that, in such circumstances, the benefit of doubt, at the stage of bail, ought to be given to the accused.

¹ 2024 SCC OnLine Del 4671 [hereinafter, “*Bantu*”].

² BAIL APPLN. 1939/2025, decided on 02.12.2025 [“*Sunday Okeke*”].



He further submits that the integrity of the seizure is doubtful as the seized substance was sealed with the seal of an officer who was not part of the raiding party at all. In this connection, he submits that in the FIR, as well as the status report filed before this Court, it is stated that the raiding party comprised of three Head Constables – HC Sandeep, HC Nemi Chand, and HC Pankaj – as well as Constable Narender. Each of these Head Constables would have had their own seal, but the seized substance is stated to bear the seal of ‘RK’. According to Mr. Meghan, the investigation was handed over to SI Rajkumar, after the seizure, and the use of a seal bearing the initials ‘RK’ casts a doubt as to whether the sealing took place at the point of seizure or later, in the Police Station.

6. Mr. Chauhan, on the other hand, submits that the seizure being of a commercial quantity of contraband, the provisions of Section 37 of the NDPS Act will be applicable, and there is no ground in the present case to satisfy the twin conditions prescribed therein. He submits that the recovery was from the person of the applicant, and any doubts as to the procedure of seizure and sealing must be addressed in the course of trial, but cannot lead to any benefit being given to the applicant at this stage. Mr. Chauhan accepts that the seizure was neither conducted in the presence of public witnesses nor videographed, but submits that the applicable provisions of the BNSS had not come into effect at the relevant time.

7. At the very outset, it may be noted that the present case involves alleged seizure of a commercial quantity of contraband and the twin restrictions on grant of bail, as prescribed under Section 37 of the NDPS Act, therefore apply. However, the Supreme Court, in several cases,



including *Mohd. Muslim v. State (NCT of Delhi)*³, *Dheeraj Kumar Shukla v. State of Uttar Pradesh*⁴, and *Rabi Prakash v. State of Odisha*⁵, has emphasised, that prolonged incarceration at the pre-trial stage, even in cases involving special statutes with restricted bail provisions, would be violative of Article 21 of the Constitution. This principle has been applied in the specific context of the NDPS Act in *Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India and Ors.*⁶, and the principle has been applied even in the case of accused who are not Indian nationals⁷. *Mohd. Muslim* further lays down that the assessment required under Section 37 is a *prima facie* assessment, and the Court is not required to come to a conclusion beyond reasonable doubt, with regard to the likelihood of guilt of the accused.

8. It is also clear from the judgements of the Supreme Court, including the recent judgement in *State of Punjab v. Sukhwinder Singh @ Gora*⁸, that the aforesaid factors must be considered holistically, applying the test under Section 37 of the NDPS Act, while also ensuring that the constitutional guarantee under Article 21 of the Constitution is not eclipsed.

9. Applying these principles to the present case, the Nominal Roll placed before the Court states that the applicant was in custody for a period of 2 years, 4 months, and 1 day, as of 01.04.2026. Thus, he has now been in custody for a period of almost 2 years and 5 months. I am

³ (2023) 18 SCC 166 [hereinafter, "*Mohd. Muslim*"].

⁴ 2023 SCC OnLine SC 918, paragraph 3.

⁵ 2023 SCC OnLine SC 1109, paragraph 4.

⁶ (1994) 6 SCC 731.

⁷ *Beneth Chukuwuddi v. State of NCT of Delhi*, BAIL APPLN. 4295/2024, decided on 17.03.2025; *Sunday Okeke*.



informed that charges were framed on 31.08.2024, but prosecution evidence has not yet commenced, despite approximately twenty months having passed since then. Mr. Meghan candidly accepts that an adjournment was taken on the last date of hearing before the Special Court on his account, but it is undisputed that prosecution witnesses were not available on several prior dates of hearing. In any event, the prosecution has cited thirteen witnesses in the chargesheet, which is indicative of trial taking a significant time.

10. As far as the merits of the case are concerned, the admitted position is that the seizure was neither conducted in the presence of public witnesses, nor was it photographed or videographed. This Court in *Bantu* has held that, even prior to such requirements having been introduced in the BNSS, this would be a relevant factor at the stage of grant of bail. The observations of the Court are reproduced below:

“72. Almost all individuals carry a mobile phone compatible for videography these days. From the above cases, it is clear that it is open for the prosecution to furnish reasons to explain and justify the absence of videography and photography in a case. Mere absence of videography and photography of the recovery does not nullify the case of the prosecution, however, the same can in some circumstances be sufficient to create a doubt as to the veracity of the prosecution’s case.

73. The Hon’ble Apex Court, in a catena of judgments has held that the more severe the punishment, greater has to be the care taken to ensure that all the safeguards provided in the statute are scrupulously followed.

74. While a little play in the joint has to be afforded to investigating agencies to enable them to discharge their duties, the authorities also have to be held accountable to prevent abuse of law. In cases where the factum of recovery of the contraband is supported only by official witnesses, lack of videography and photography, especially in the absence of independent witnesses, casts a doubt on the recovery of the contraband, unless the same is justified by cogent reasons.

⁸ 2026 INSC 411.



75. As already noted above, in the case of absence of independent witnesses, it is to be seen whether any prejudice is caused to the accused person and testimonies of the police officials can be believed even without corroboration if the same is found to be credible. This Court is of the opinion that the same rationale would extend to cases where there is no photography and videography as well, specially when the same has been deliberated and commented upon by Courts on numerous occasions.

76. The sufficiency of the explanation, if any, is to be tested during the course of the trial after the prosecution has led its evidence, however, in the opinion of this Court, the absence of any independent evidence to support recovery (presence of public witnesses, videography or photography) is a relevant factor while considering applications for grant of bail as the same casts a shadow over the very fulcrum of the case.”

11. The same view has taken in the judgement of a coordinate Bench in *Sunday Okeke*, which also concerns a case of a foreign national, and a seizure which occurred on 07.04.2023, prior to the seizure in the present case. The principle has been articulated by the Court in the following terms:

“16. It is the case of the prosecution that the said raid was conducted during daylight hours i.e. around 05.00 - 05.30 P.M. in a public place. Despite this, no public witnesses have joined nor any cogent explanation has been offered for the same. While the absence of independent witnesses may not be fatal to the case of the prosecution, it impacts the transparency and reliability of the search and seizure process, particularly at the stage of bail, where the Court must assess whether a *prima facie* case has been made out against the accused. Reference in this regard may be had to the decision of the Coordinate Bench of this Court in *Beneth Chukuwuddi (supra)* as well as *Bantu v. State Government of NCT of Delhi*. Likewise, Hon’ble Supreme Court in *Shafhi Mohd. v. State of H.P.*⁹ has also emphasised that the video or photographic documentation of a crime scene, serves as a critical safeguard, ensuring transparency and accountability in the handling of evidence, which is evidently missing in the present case. The following observations from *Beneth Chukuwuddi (supra)* could beneficially be referred to:

“8. It is to be noted that the raiding party, acting on

⁹ 2018) 5 SCC 311.



information received on 10th March, 2023, had sufficient time to secure independent witnesses before conducting the raid. However, no reasonable explanation has been provided for this omission. Since the alleged recovery took place in a public area, where securing independent witnesses would not have posed any practical difficulty, this lapse reflects a lack of diligence on the part of the investigating agency. **While the absence of independent witnesses may not be fatal to the prosecution's case per se, it does impact the transparency and reliability of the search and seizure process, particularly at the bail stage, where the Court must assess whether a prima facie case has been made out against the accused.**

9. This Court in **Bantu v. State Government of NCT of Delhi**, took note of the frequent and mechanical explanations offered for the non-joinder of independent witnesses in cases involving the seizure of contraband. **It was observed that the absence of independent witnesses, especially in crowded public places, warrants careful judicial scrutiny. This practice undermines the transparency of the seizure procedure and weakens the evidentiary value of the recovery. In the present case, the failure to associate independent witnesses, despite the raid occurring in a public location, indicates a lapse in the search process. While such lapses do not, by themselves, render the recovery invalid, they diminish the evidentiary value of the seizure and introduce reasonable doubt about the integrity of the prosecution's case, which becomes particularly relevant in cases under the NDPS Act, where strict compliance with procedural safeguards is imperative given the severe consequences involved.**

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11. The Supreme Court, in the case of **Shafhi Mohd. v. State of H.P.**⁸ emphasised that the video or photographic documentation of a crime scene, serves as a critical safeguard, ensuring transparency and accountability in the handling of evidence. Further, in **Bantu**, this Court observed that in instances where videography or photography has not been undertaken, the prosecution can provide clear and valid justifications for such omissions. These judicial observations were made even prior to the enactment of the mandatory videography and photography requirements under the BNSS, illustrating that the Court has recognized the vital role of such documentation in ensuring the fair administration of justice.

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19. Additionally, it is pertinent to note that the Applicant has been in custody for 2 years. Although the chargesheet has



been filed, the charges are yet to be framed and there is no indication that the trial will conclude in the foreseeable future.

20. The right to life and personal liberty, enshrined under Article 21 of the Constitution of India, 1950, cannot be rendered nugatory by unwarranted delays in the judicial process. The prolonged incarceration undermines the fundamental right to personal liberty. The extended period of custody, combined with the delay in trial, justifies the Applicant's plea for conditional liberty through the grant of bail, thereby balancing the rights of the accused with the requirements of justice."

(emphasis supplied)"

12. The aforesaid binding authorities support the applicant in the present case also. Here also, the alleged seizure took place at a public place, during the day, but no public witnesses were associated. It was also not photographed or videographed. The additional argument, with regard to doubt being cast on the integrity of the process of seizure and sealing of the recovered contraband, is left open to be addressed at the trial.

13. On a holistic consideration of the facts of the present case, therefore, I am of the view that the applicant is entitled to be released on bail. It is directed that the applicant be released on bail in connection with FIR No. 1497/2023 dated 01.12.2023, registered at Police Station Nihal Vihar, Outer District, Delhi, under Section 22(c) of the NDPS Act, subject to furnishing of a bail bond in the sum of Rs. 50,000/-, with one surety in the like amount, to the satisfaction of the concerned Trial Court/Duty Magistrate, and subject to the following further conditions:

- a. The applicant shall appear before the learned Trial Court on each and every date of hearing fixed.



- b. The applicant shall surrender his passport to the learned Trial Court, and shall not leave the country without the prior permission of the learned Trial Court.
- c. The applicant shall provide the address where he is residing during the pendency of the case to the concerned Investigating Officer [“IO”]/Station House Officer [“SHO”]. The applicant shall intimate the IO/SHO, and file an affidavit before the concerned Trial Court, regarding any change in his residential address.
- d. The applicant shall furnish to the concerned IO/SHO, a mobile number on which he may be contacted at any time and shall ensure that the number is kept active and switched on at all times. The same shall not be switched off or changed without prior intimation to the IO/SHO.
- e. The applicant shall not contact, nor visit, nor offer any inducement, threat, or promise to any of the prosecution witnesses or other persons acquainted with the facts of the case.
- f. The applicant shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial.
- g. The applicant shall not commit any offence during the period of his release.
- h. In terms of the judgment of the Supreme Court in *Frank Vitus v. Narcotics Control Bureau and Ors*¹⁰, the State shall immediately communicate the order granting bail, to the concerned Foreign Registration Officer appointed under Rule 3 of the Registration of



Foreigners Rules, 1992, who in turn, shall communicate the order to all concerned authorities including civil authorities in order to enable them to take appropriate steps under the Foreigners Act, 1946, the Registration of Foreigners Rules, 1992, and Foreigners Order, 1948, in accordance with law.

14. The bail application is disposed of in terms of the above.

15. It is clarified that the observations made herein are solely for the purpose of adjudication of the present bail application, and shall not be construed as an expression of opinion on the merits of the case, nor shall they prejudice the rights and contentions of the parties at any stage of the proceedings.

16. A copy of this order be sent to the concerned Jail Superintendent for information and necessary compliance.

PRATEEK JALAN, J

APRIL 27, 2026

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¹⁰ (2025) 3 SCC 1.