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

+ **BAIL APPLN. 1757/2025**

JOSHUA KUTEESA

.....Applicant

Through: Mr. Anup Kumar Das, Mr. Uday Chauhan, Ms. Ishita Singh and Ms. Prachi, Advocates.

versus

CUSTOMS

.....Respondent

Through: Mr. Gibran Naushad, SSC with and Mr. Suraj Shekhar Singh, Advocates.

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

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06.04.2026

1. By virtue of the present application under *Section 483* of the Bharatiya Nagarik Suraksha Sanhita, 2023 the applicant seeks grant of regular bail in Sessions Case No.836/2022 arising out of Criminal Complaint No.VIII(AP)10/P&1/3412-A/Arrival/2022 registered at PS: Customs IGI Airport, New Delhi for the offences punishable under *Sections 21/23* of the Narcotic Drugs and Psychotropic Substances Act, 1985 (**NDPS Act**).

2. *Briefly put*, as per prosecution, on 10.04.2022 the applicant herein, who is a Ugandan national and had travelled to New Delhi from Sharjah, United Arab Emirates aboard Flight No.G9 721, was intercepted by the Customs officials at Terminal 3, Indira Gandhi International Airport based on his Advance Passenger Information System/ APIS profiling. Thereafter, he was served with a Notice under *Section 102* of the Customs



Act, 1962 (*Customs Act*), whereon he voluntarily submitted that he had ingested certain pellets/ capsules containing narcotic substances, as well as willingly agreed to undergo the procedure for removal thereof. The applicant was then admitted to RML Hospital, New Delhi, and during his stay from 10.04.2022 to 18.04.2022, a total of 81 capsules were seized by the Customs Department, which upon testing, were detected to be 908g of Heroin. Accordingly, proceedings under the NDPS Act were initiated against the applicant, who was subsequently arrested on 19.04.2022. Charges under Sections 21(c)/23(c) NDPS Act have since been framed against the applicant by the learned Special Court (NDPS), Dwarka Courts, Delhi (**learned Trial Court**) vide order dated 24.04.2023.

3. In these facts, learned counsel for the applicant primarily submits that the arrest of the applicant and his continued detention are illegal, since no grounds of arrest were supplied to him in violation of the mandate under Article 22(1) of the Constitution of India, as also he was not produced before a Magistrate during the entire period of his stay at the RML Hospital and was also denied access to a mobile phone without providing him with any reasons/ information. For this, he relies upon the decisions of the Hon'ble Supreme Court in **Vihaan Kumar vs. State of Haryana:2025 SCC OnLine SC 269**, **Prabir Purkayastha vs. State (NCT of Delhi):(2024) 8 SCC 254** and **Mihir Rajesh Shah vs. State of Maharashtra & Anr.:2025 SCC OnLine SC 2356**.

4. Learned counsel further submits that the applicant has been in judicial custody for nearly past *four years*, and till date only 6 out of the 36 prosecution witnesses have been examined. Relying upon **Rabi Prakash vs. State of Odisha:2023 SCC OnLine SC 109** and **Union of**



India vs. K.A. Najeeb:(2021) 3 SCC 713 he submits that continued incarceration of the applicant is in gross violation of *Article 21* of the Constitution of India.

5. Lastly, he submits that the delay in CFSL analysis of the samples as well as the absence of videography/ CCTV footage detract from a *prima facie* case against the applicant, and a fit case for grant of regular bail is made out.

6. Learned SSC for the respondent/ Customs has handed over a copy of the written synopsis, which is taken on record. Based thereon, regarding the period of stay of the applicant in the Hospital he submits that the same was Hospital-based detention under medical supervision and not arrest. Therefore, since the applicant admitted having ingested narcotic substances and voluntarily submitted himself for suitable action, he was taken for bringing out such goods inside his body after serving him a due Notice under *Section 102* Customs Act. The same is duly recorded in the Complaint in terms of *Section 103(8)* thereof. Thus, there was no requirement of producing him before the Magistrate during such stay. For this, he relies upon the decisions of Co-ordinate Benches of this Court in ***Lydia Kabukazi Aloyo vs. Customs:2025:DHC:11877*** and ***Christina Katushabe Ayebale vs. Customs:2025:DHC:11527***. He submits that it was only after the recovery of *81 capsules* being *908g* of Heroin from the applicant that he was arrested in accordance with *Section 43(b)* NDPS Act, as also apprised of the grounds of his arrest in writing, as evident from the copy of the Arrest Memo dated 19.04.2022 attached with the written synopsis.



7. Learned SSC further submits that the offence is serious in nature, more so, since the applicant was involved in smuggling a commercial quantity of heroin into the Country. For this, the rigours of *Section 37 NDPS Act* are attracted in full force, and in the presence of a strong *prima facie* case against the applicant, as well as his chances of absconding and committing further offences being a foreigner, no case for granting him bail is made out. For this, he relies upon ***Union of India vs. Ram Samujh & Anr.:1999 (9) SCC 429*** and ***Francis Marion Gregg vs. Customs:2024 SCC OnLine Del 6834***. *Qua* the period of incarceration, he submits that the minimum punishment prescribed for the offence under *Section 23(c) NDPS Act* is *10 years*, extendable up to *20 years*, and as such, in view of ***Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) vs. Union of India:1994 (6) SCC 731***, the period of incarceration spent by the applicant is insufficient to be a reason for granting regular bail to him.

8. Heard learned counsel for the applicant as also learned SSC for Customs and perused the documents on record.

9. Upon careful consideration this Court finds that in view the applicant's own admission of having ingested narcotics, as also his voluntary submission to the procedure for their removal, in view of the clear distinction drawn in *Section 103(8) Customs Act*, his medical/Hospital detention cannot be held to be illegal by any measure and/ or attributed to anyone but to him, reliance in this regard may be made to ***Lydia Kabukazi Aloyo (supra)*** and ***Christina Katushabe Ayebale (supra)***. Also, the Arrest Memo dated 19.04.2022 was only issued to him after his subsequent arrest based upon the recovery of contraband from his body,



and that being specific, clear and unequivocal there is scope for the applicant to now contend that he was not communicated/ supplied with the grounds of arrest. Thus, reliance upon **Vihaan Kumar (supra)**, **Prabir Purkayastha (supra)** and **Mihir Rajesh Shah (supra)** by learned counsel for the applicant is misconceived.

10. Besides these, the nature of the alleged offence and the quantity of the commercial quantity of the contraband involved recovered from the applicant, who is a foreign national purportedly travelling to India with the purpose of smuggling large quantities of the drug involved are both against the applicant. Moreover, this Court has to take note of the rigours of *Section 37 NDPS*. As highlighted in **Ram Samujh & Anr. (supra)**, strict rigours in consideration of the serious public health and socio-economic consequences in society have to be followed by this Court. In fact, in **K.A. Najeeb (supra)** relied on by learned counsel for the applicant himself, the Hon'ble Supreme Court has highlighted that *Section 37 NDPS Act* places an inalienable requirement for the Court to reach a *prima facie* satisfaction that an accused is not guilty and not likely to engage in future criminal activity before granting bail.

11. Cumulatively taking all the aforesaid factors, that the applicant has been in judicial custody for nearly the past *four years* fails into insignificance. In any event, considering the minimum punishment prescribed for the offences alleged is *ten years*, in view of the clear dictum of the Hon'ble Supreme Court in **Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) (supra)**, the applicant is in no position to seek benefit solely of his incarceration.

12. Resultantly, the applicant clearly fails the mandatory conditions as



set out in *Section 37 NDPS Act* at this stage. As such, this Court is not satisfied of granting a regular bail to the applicant, particularly, since he does not have roots in India, and if granted bail there is a strong apprehension of his absconding, becoming untraceable and evading the process of law.

13. Accordingly, the present application is dismissed.

14. Needless to say, the expression of opinion herein, if any, will have no bearing on the overall merits/ trial involved later.

SAURABH BANERJEE, J

APRIL 6, 2026/So