



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

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Judgment reserved on: 13.02.2026

Judgment delivered on: 16.02.2026

BAIL APPLN. 3428/2025

KITOKO NGIEMBO ALAIN

.....Petitioner

versus

CUSTOMS

.....Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. Javed Khan with Mr. Anubhav Chandra, Advocates.

For the Respondent: Mr. Shubham Tyagi, SSC, CBI.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

1. Applicant seeks bail in complaint case No. VIII(AP)(10)P&I/3358-DARRIVAL/2022 registered at PS IGI Airport for commission of offences under Section 8/21/23/28 of *Narcotic Drugs and Psychotropic Substances Act, 1985* (in short *NDPS Act*).
2. The applicant, a foreign national and holder of Congolaise Passport (*Democratic Republic of Congo*), landed on 20.02.2022 at Terminal-3, IGI Airport, New Delhi by a flight coming from Addis Ababa. He walked through Green Channel and when asked whether he was carrying gold or contraband, he replied in negative. On screening, nothing suspicious was recovered, either from his person or his bag. However, since the Custom



Officials remained suspicious, they made further inquiry which brought fore to the fact that he had ingested some pellets/capsules containing some narcotics substance. On asking whether he required any medical assistance for extraction of such pellets/capsules, he expressed his desire to go to toilet where he was taken and where he extracted 19 numbers of capsules/pellets.

3. The abovesaid extracted capsules were taken into possession same day i.e. on 20.02.2022. These, allegedly, contained contraband.
4. A notice under Section 103 of Customs Act, 1962 was also served to which applicant, as alleged, voluntarily, admitted that he had ingested capsules containing narcotic substance which were inside his body and submitted his willingness to undergo medical procedure for removal, thereof.
5. Resultantly, he was taken to RML Hospital where applicant eased out 54 more capsules, containing contraband.
6. Thus, there was total recovery of 73 capsules, which contained 986 grams of powdery substance.
7. The substance, suspected to be cocaine, was confiscated under section 43 of NDPS Act on 24.02.2022.
8. The applicant was discharged from RML Hospital on 24.02.2022 and his statement under Section 67 of NDPS Act was recorded on 25.02.2022 and thereafter he was put under arrest and seizure and arrest report under Section 57 of NDPS Act were prepared and he was



produced before Court on 25.02.2022.

9. Abovesaid complaint was filed in the Court on 24.08.2022.

10. Trial is underway.

11. The prime-most grievance taken by the applicant is to the effect that once the applicant had already been intercepted and suspected concealing contraband inside his body, he should have been produced before the Magistrate. Moreover, once there was alleged recovery of 19 capsules at the toilet of IGI Airport itself, there should have been, thereafter at least, requisite compliance of the mandatory provisions as contained under NDPS Act and his immediate production before the court but neither he was produced before the Court nor any endeavour was made by Customs to send any communication to the concerned Court, with respect to the abovesaid arrest and recovery. So much so, notice under Section 57 of NDPS Act was prepared on 25.02.2022, which was beyond the prescribed limit of 48 hours. Referring to upon *Habiob Bedru Omer v. Customs*, 2025 SCC OnLine Del 4263, it is argued that neither the applicant was ever presented before any magistrate nor the customs officers obtained any permission from the magistrate to extract further drugs from his body and, therefore, he remained in illegal custody. Relying on *Directorate of Enforcement v. Subhash Sharma* 2025 INSC 141, it is emphasized that once a Court, while dealing with a bail application, finds that the fundamental rights of the accused under Articles 21 and 22 of the Constitution of India have been violated while



arresting the accused or after arresting him, it is the duty of the Court dealing with the bail application to release the accused on bail.

12. It is also contended that trial is proceeding at snail pace, despite earlier directions given by this Court and, therefore, there is frustration of invaluable right of speedy trial.

13. All such contentions have been refuted and Sh. Shubham Tyagi, learned Senior Standing Counsel submits that statutory procedures and mandatory safeguards have been duly followed and the applicant was served with prescribed notices under Section 50 NDPS Act and Sections 102 and 103 of Customs Act and that willingness of applicant was duly recorded, before proceeding further in the matter. The recovery was transparent and independent panch witnesses were associated at every material stage and moreover, such aspects regarding alleged infraction or violation are subject matter of trial and cannot be adjudicated herein. He contends that applicant is a foreign national, who has no permanent roots in India and is a flight risk and Court must not employ liberal approach in cases involving commercial quantity.

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

15. Indubitably, the contentions regarding alleged violations would be appropriately answered during the trial but at the same time, there is no rigid proscription and in case, there is serious violation going to the root of the matter and affecting personal life and liberty, same can be



considered, on surface level, at least in these proceedings also. Of course, the act of ingesting contraband may *prima facie* imply complicity but it also needs to be seen whether procedure applicable for *goods liable to confiscation secreted inside body* have been followed in *letter and spirit* or not.

16. As per Section 103 Customs Act, where proper officer has reason to believe that any such person has any goods liable to confiscation secreted inside his body, he may detain such person and *produce him without unnecessary delay before the nearest magistrate*. Thereafter, the magistrate, before whom any such person is brought, if he sees no reasonable ground for believing that such person has any such goods secreted inside his body, forthwith discharge such person. However, where any such magistrate has reasonable ground for believing that such person has any such goods secreted inside his body and the magistrate is satisfied that for the purpose of discovering such goods it is necessary to have the body of such person screened or X-rayed, he may make an order to that effect.

17. Of course, as per Section 103(8) Customs Act, nothing in said section shall apply to any person *who admits that goods liable to confiscation are secreted inside his body, and who voluntarily submits himself for suitable action being taken for bringing out such goods*.

18. Herein, we do not come across any hint of specific willingness or admission, from the bare contents of notice.



19. The contents of the notice were, reportedly, explained in French to the applicant, as he did not understand English. The concerned witness who explained about notice to the applicant in French, merely, states therein that *'I have explained to pax in French language'*. It is conspicuously silent as to what was the response given by the applicant. The abovesaid one-line is not reflective of any admission or willingness of applicant. It is also difficult to decipher from the above whether the applicant was even able to comprehend the contents or not. Such a crucial aspect cannot be, generally speaking, left for imagination.

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.

22. Out of 29 cited witnesses, respondent has, reportedly, examined mere 8 witnesses and the period of total incarceration of the application is close to four years. There is no thumb rule as to when period of incarceration would be labelled as ‘prolonged’ one. It needs to be evaluated and analyzed, on case-to-case basis.



23. The applicant is in custody since the date of his arrest i.e. 25.02.2022 and there is no likelihood of completion of trial in near future. This Court had earlier dismissed his bail application on 02.12.2024 and by that time, four witnesses had been examined and it was ordered that trial court shall ensure that witnesses are examined expeditiously. Despite such specific directions given by this Court in Bail Application No. 2907/2024, only four witnesses have been examined in last 13 months.

24. 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 the 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.

25. When the passport of the applicant was seized, it was having requisite validity and there was valid visa. These have expired in the interregnum because of the custody in the present matter. Learned counsel for the applicant submits that the applicant, if released, would abide by any condition to be imposed upon him and, in the meanwhile, he



would apply for requisite validation and regularization of his passport and Visa.

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

- (i) The surety shall be local.
- (ii) 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.
- (iii) The applicant shall report to the concerned IO, every Sunday at 10:00 AM, till validation of his passport/visa.
- (iv) The applicant shall not leave the National Capital Region of Delhi, without prior permission of learned Trial Court.
- (v) The applicant shall not try to contact and influence any witness, directly or indirectly.
- (vi) He shall provide one Mobile Number to the concerned I.O and shall ensure that such Mobile Number remains active and operational, till the disposal of the case by the learned Trial Court.

27. Any violation of the above conditions shall invite cancellation of



bail.

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

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

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

31. Order be also uploaded on the website of this Court, *forthwith*.

(MANOJ JAIN)
JUDGE

FEBRUARY 16, 2026/st/pb