



2026:DHC:776



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

Reserved on: January 08, 2026
Pronounced on: January 31, 2026

%

+ **BAIL APPLN. 4027/2025**

OKOLI ANAYO FRANKLIN

.....Applicant

Through: Mr. Javed Khan, Adv.

Versus

THE STATE NCT OF DELHI

.....Respondent

Through: Ms. Meenakshi Dahiya, APP for the
State alongwith Ms. Vanshika Singh
and Mr. Bhanu Pratap Singh, Adv.
and SI Akash Deep, Special Staff,
North District.

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

1. By virtue of the present bail application under *Section 483* read with *Section 528* of the Bharatiya Nagarik Suraksha Sanhita, 2023 (**BNSS**), the applicant seeks grant of regular bail in proceedings arising from FIR No.168/2021 dated 10.11.2021 registered at PS.: Maurice Nagar, Delhi under *Sections 21/25/29* of the Narcotic Drugs and Psychotropic Substances Act, 1985 (**NDPS Act**) read with *Section 14* of the Foreigners Act, 1946.

2. As per FIR, on 09.11.2021 at about 09:00 PM, secret information was received that two citizens of African origin, namely Ora Gevisin @ Leonard and Okoli Anayo Franklin i.e. the applicant herein involved in supply of

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heroin in Delhi, would travel from Delhi University, Patel Chest to Roop Nagar between 10:00 PM and 10:30 PM in a white Toyota Corolla Altis bearing No.HR-26AU-2145 (**Car**). Pursuant to directions from the ACP, Operations Cell, North District, Delhi (**ACP**), and after reducing the same into writing as DD No.17 dated 09.11.2021 at 09:35 PM, at about 10:15 PM, a raiding team intercepted the said Car near Daulat Ram College red light, Sant Kripal Marg, Delhi University when the driver attempted to flee towards Vijay Nagar but struck the footpath causing the Car to stop. The applicant, with Ora Gevisin were apprehended, and then served with Notices under *Section 50* of the NDPS Act, as also the contents thereof was explained to them by the SI. Both accused persons waived their right to be searched in presence of a Gazetted Officer or Magistrate.

3. Pursuant to the mandate of *Section 50* of the NDPS Act, ACP arrived at the spot at around 01:30 PM, and informed them of their legal rights, and as per his directions, their search, and that of the Car were conducted. Though no contraband was recovered from the Car or from the person of the applicant, however, two plastic bags, one containing brown coloured powder and the other containing lumpy substance and powder were recovered from a brown bag worn around the neck of Ora Gevisin @ Leonard, bearing the logo DA MILANO ITALIA 1989. They were found to be Heroin weighing 42 grams and 214 grams respectively, totalling 256 grams. On verification, both accused were found to be on expired passport and visa. Both the accused persons were arrested and FIR No.168/2021 dated 10.11.2021 registered at PS.: Maurice Nagar, Delhi under *Sections 21/25/29* of the Narcotic Drugs

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and Psychotropic Substances Act, 1985 (**NDPS Act**) read with *Section 14* of the Foreigners Act, 1946.

4. Of the many grounds raised by the applicant in the present application, Mr. Javed Khan, learned counsel for the applicant submitted that the applicant has been falsely implicated in the present FIR, as no recovery whatsoever has been effected from his possession or at his instance, and that the applicant was merely present in the Car along with the co-accused. The learned counsel then submitted that the rigours of *Section 37* of the NDPS Act are, thus, not applicable to the applicant. The learned counsel also submitted that although the applicant was apprehended on the basis of secret information, no efforts were made by the police officials to invite/ associate independent witnesses from the public, despite the alleged recovery having been effected from a crowded public place, thereby rendering the recovery contrary to the procedure established by law.

5. Mr. Javed Khan, learned counsel then submitted that the prosecution has failed to place on record any photographic or videographic evidence to substantiate that the search and seizure proceedings were conducted in accordance with law or that the alleged contraband can be attributed to the applicant. Therefore, as per the learned counsel and in view of the observations made by this Court in ¹***Dharmender Yadav vs. State of NCT of Delhi***, the absence of the aforesaid safeguard leaves the recovery process open to question.

¹ Bail Appln.3813/2024: order dated 05.03.2025



6. Relying upon *Sukhdev Singh vs. State of Haryana*², Mr. Javed Khan, learned counsel submitted that since the applicant was arrested on the basis of secret information between sunset and sunrise, the search and seizure could not have been conducted without obtaining warrant or authorization as per *proviso (2) of Section 42(1) of the NDPS Act* and any non-compliance thereof is fatal to the case of the prosecution as also to vitiate the whole trial.

7. Mr. Javed Khan, learned counsel also submitted that the applicant has been languishing in jail since 10.11.2021, and his continued incarceration would not serve any purpose as the investigation was completed and Charge Sheet was filed way back on 03.03.2022. Lastly, the learned counsel submitted that since the co-accused has already been granted regular bail *vide* order dated 25.10.2023 by the learned Special Judge, thus, on the principle of parity, the applicant, who is languishing in judicial custody since 10.11.2021 be granted bail.

8. *Per contra*, opposing the present application Ms. Meenakshi Dahiya, learned APP for the State submitted that the applicant was travelling in the same Car along with the co-accused, from whom 256 grams of heroin, which constitutes a '*commercial quantity*' under the NDPS Act, was allegedly recovered, the embargo of *Section 37 of the NDPS Act* finds applicability. Furthermore, upon interception of the Car by the raiding team, both the accused alighted and attempted to flee, and the applicant along with the co-accused were chased and apprehended.

² AIR 2013 SC 953



9. Ms. Meenakshi Dahiya, learned APP then submitted that further investigation revealed that the applicant was residing in the same rented accommodation along with the co-accused, and that the applicant was found to be without valid passport and visa. Further, admittedly as the applicant does not have any permanent address in India, in view of the fact that the applicant herein committed the present offence while he was released on bail in FIR No.351/2019 dated 17.11.2019 registered at PS.: Malviya Nagar under *Section 22* of the NDPS Act, there exists a high likelihood that if released on bail, he may abscond and jump the bail and may indulge in similar criminal activities again.

10. Ms. Meenakshi Dahiya, learned APP lastly submitted that though the co-accused was released on regular bail *vide* order dated 25.10.2023, however, since he jumped the bail and is now absconding, a Non-Bailable Warrant (**NBW**) has already been issued against him. In view of the aforesaid, the learned APP submitted that bail may not be granted to the applicant.

11. This Court has heard the learned counsel for the applicant and the learned APP for the State as also perused the Status Report and the other documents on record as also the judgments cited at Bar.

12. Since the present case is pertaining to recovery of 256 *grams* of heroin, a '*commercial quantity*' under the provisions of the NDPS Act, the rigours of *Section 37* of the NDPS Act will be applicable and the Court may grant bail, however, upon satisfaction of the twin conditions, being (*i*) that there are reasonable grounds to believe that the accused is not guilty of the alleged



offence, and (ii) that the accused is not likely to commit any offence while on bail.

13. Bearing the aforesaid twin conditions in mind, and since the applicant herein has stated to have committed the present offence while he was already released on bail in FIR No.351/2019 dated 17.11.2019, and that too registered under *Section 22* of the NDPS Act, it reflects a continuing pattern of criminal conduct. Further, since the applicant is a foreign national with no permanent place of residence or roots in India, renders him at flight risk. This is a case where evidence is still ongoing and only 2 out of the 19 prosecution witnesses have been examined before the learned Trial Court so far. It is not a case of the applicant that there has been any delay of any kind on account of anyone, it is not a case of any inordinate delay as such. That his co-accused, after being granted regular bail is untraceable, which in turn has resulted in issuance of NBW against him, is also a vital factor for consideration in the facts involved.

14. Regarding (non-)compliance of the mandate prescribed under *Section 42* of the NDPS Act, DD Entry No.17 dated 09.11.2021 as also the FIR registered subsequent thereto, the issue of compliance or otherwise with a statutory provision being subjective requires trail and since this is the stage when the applicant is seeking grant of bail, it is not being considered at this stage.

15. In wake of the above scenario, simply because there is no photographic or videographic evidence cannot lend any support for the applicant to seek bail.



16. Under such circumstances, and as per the law laid down by the Hon'ble Supreme Court for considerations regarding grant of bail in *Prasanta Kumar Sarkar vs. Ashis Chatterjee*³; *State of Uttar Pradesh vs. Amaramani Tripathi*⁴ and *Deepak Yadav vs. State of Uttar Pradesh*⁵, releasing the applicant on bail, at this stage, may result in the applicant influencing the witnesses and/ or tampering with evidence, which is improper. Granting bail to the applicant could lead to frustrating the administration of justice.

17. In view of the aforesaid, this Court is, thus, not inclined to grant bail to the applicant. Accordingly, the present application is dismissed in the aforesaid terms.

18. Needless to state the observation made, if any, on the merits of the matter are purely for the purposes of adjudicating the present application and shall not be construed as expressions on the merits of the matter.

SAURABH BANERJEE, J

JANUARY 31, 2026/Ab/DA

³ (2010) 14 SCC 496

⁴ (2005) 8 SCC 21

⁵ (2022) 8 SCC 559