



2026:DHJ:2249



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

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Judgment reserved on: 10.03.2026

Judgment delivered on: 17.03.2026

+ **BAIL APPLN. 4689/2025**
MARIA NUEMIA ALBERTINA
versus

.....Petitioner

CUSTOMS

.....Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. Rohan Gupta with Mr. Anoop Kumar
Gupta, Advocates.

For the Respondent: Mr. Vishal Chadha, Sr. Standing Counsel for
Customs with Mr. Chandan Kumar, Advocate.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN
JUDGMENT

1. Applicant seeks regular bail in case¹ registered against her for commission of offences under Sections 8, 21, 23 and 28 of *NDPS Act*².

2. As per prosecution's case, on the basis of secret information, a team was mounted at the exit gate of Flight No. 6E1308 at Terminal-3 of *Indira Gandhi International Airport*. The applicant, a foreign national, landed on 02.07.2024 and was intercepted by the Customs officials on suspicion of carrying narcotic drugs/psychotropic substances. Initially, on scanning of her baggage through X-Ray machine and when she was asked to pass through DFMD, nothing was recovered. However, on suspicion basis, she was taken to 'Customs Prevention Room' at IGI Airport itself. She was asked about the language in which she could communicate comfortably.

¹ Complaint case No. VIII(AP)(10)P&I/4995-A/ARRIVAL/2024, registered at P.S. Customs, IGI Airport, Delhi

² *Narcotic Drugs and Psychotropic Substances Act, 1985*



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She, reportedly, stated that she understood '*Portuguese*' and '*French*' and understood little English language.

3. She was served with notice under Section 50 of the NDPS Act and Section 102 of the *Customs Act, 1962*.

4. Interestingly, help of artificial intelligence (AI) tool i.e. *Google Translator* was taken by Customs to make her understand the proceedings.

5. During her personal search conducted at the spot, eight capsules were recovered, which she had concealed in her undergarments. She further admitted and informed Customs Officials that she had also ingested some pellets/ capsules containing narcotic drugs/ Psychotropic substance which were concealed inside her body and expressed her willingness and consent to undergo proper medical procedure for its extraction from her body.

6. A notice under Section 103 of *Customs Act, 1962* was served and upon her consent, she was admitted to Safdarjung Hospital on 02.07.2024 for medical examination where she was kept under preventive observation and later egested 34 more capsules.

7. There was, thus, total recovery of 42 capsules and upon testing, the content in such capsules was found to be *Cocaine*. The total recovered substance weighed approximately 503 grams, which is commercial quantity under NDPS Act.

8. The applicant was, eventually, discharged from Safdarjung Hospital on 06.07.2024. Her statement under Section 67 NDPS Act was recorded on



07.07.2024 and she was, thereafter, formally arrested same day and was produced before court for remand purpose.

9. A complaint was filed in the Court on 25.12.2024.

10. Charges were framed on 21.02.2025 and trial is underway.

11. The bail is being sought for multiple reasons. *Firstly*, the applicant had been apprehended on 02.07.2024 and thereafter remained in the custody of the respondents-Customs without being produced before the Magistrate within twenty-four hours of such detention. Learned counsel for the applicant submits that once she had already been intercepted and recovery had been made at the Airport itself, she ought to have been produced before the Magistrate, immediately. On the contrary, she was taken to Safdarjung Hospital and was kept under detention there in illegal and unlawful manner. It is argued that such detention is in violation of Article 22(2) of the *Constitution of India* read with Section 58 of BNSS³, 2023, as she was not produced before the nearest Magistrate within twenty-four hours and no custody remand or special order under Section 187 BNSS was obtained. 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 07.07.2024. *Secondly* and more importantly, she was not made aware about her legal rights in proper manner. It is argued that the use of 'artificial tool' was absolutely unwarranted and such superfluous compliance has rendered the entire documentation *non-est*, particularly when even the alleged

³ *Bharatiya Nagarik Suraksha Sanhita*



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translated copies do not depict her answers at all. 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. The trial is underway and out of the cited 26 prosecution witnesses, only one witness has entered into the witness box so far, and therefore, apparently, as per learned counsel for applicant, there is no likelihood of trial concluding in near future, which makes her entitled to be released on bail.

12. Learned Senior Standing Counsel for Customs, while opposing the bail *plea* of the applicant, 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 the willingness of applicant was duly recorded before proceeding further in the matter. It is submitted that 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, at the stage of seeking bail. He contends that 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 applicant had, after comprehending all the relevant notices including notice under Section 103 of *Customs Act, 1962*, volunteered her



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admission in the hospital, she was taken to the hospital, and thereafter, when she was discharged, she 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.

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

14. Indubitably, though the contentions regarding alleged violations would be appropriately answered during the trial, at the same time, there is no rigid proscription in evaluating said aspects on surface level and in case, the Court comes across any serious violation going to the root of the matter



and affecting personal life and liberty, the same can be considered at the time of consideration of bail *plea* also.

15. 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. Undeniably, 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, I, however, do not come across any clear hint of specific willingness or admission, from the bare contents of notice.



19. First of all, a notice under Section 50 NDPS Act was served upon the applicant. A copy of notice served upon the applicant in *English* is attached with the petition. As per the abovesaid notice, the applicant was apprised about her legal rights and was told that if she so desired, her personal search and search for the baggage could be conducted before “a *Magistrate* or *Gazetted Officer* or by any lady *Officer of Customs*”.

20. As per contents appearing in notice in English language, she gave her no objection in getting herself searched before any ‘*lady custom officer*’. Interestingly, the translated copy, generated through AI tool, does not contain her response or reply and it merely contains her signatures as well as signatures of one Vikas Kumar. Such Vikas Kumar is stated to be a person who, allegedly, explained the contents of the notice to her in her vernacular language but according to learned Counsel for applicant, name of this material person does not even figure in list of witnesses.

21. Fact, however, remains that the translation got done through AI tool is incomplete and does not contain the reply. Thus, it is not very clear and discernable whether she was, actually, duly apprised about her legal rights in desired manner or not and whether the search was as per her response. Moreover, the legal provision contained under Section 50 NDPS Act is amply clear and there could not have been any *addition or subtraction* to such provision and, therefore, it was unlawful on part of Customs to have apprised her that she could even be searched by any lady officer of Customs. As per mandate of law, the search could have been only before a Magistrate or Gazetted Officer.



22. Similar is the fate with respect to notice under Section 102 of *Customs Act*. The translated copy generated through AI tool does not contain the reply part. Mere signatures of one Vikas Kumar on translated copy does not seem to serve the real purpose.

23. 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."

24. 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 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.

25. Situation is almost similar here, too. Admittedly, 8 capsules, containing *cocaine*, had been recovered at the Airport itself. 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 her 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. 02.07.2024.

26. Learned counsel for the respondent-Customs has also relied upon *Lydia Kabukazi Aloyo v. Customs* (in BAIL APPLN.1429/2025) 2025:DHC:11877. However, the facts in abovesaid judgment are clearly distinguishable from the present one, as in that case, admittedly, no contraband was recovered at the Airport.



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27. As per Nominal Roll of the applicant, she is in custody since the date of her arrest i.e. 07.07.2024 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***.

28. Keeping in mind the overall facts of the case, the applicant is, hereby, directed to be released on bail on her 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 her release, shall be revealed in advance and the learned Trial Court will be at liberty to get the same verified, before accepting the bonds.



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- (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) She shall provide one Mobile Number to the concerned I.O and shall ensure that her such Mobile Number remains active and operational, till the disposal of the case by the learned Trial Court.
29. Any violation of the above conditions shall invite cancellation of bail.
30. Needless to state, nothing observed hereinabove shall amount to final expression on the merits of the case.
31. The application stands allowed and disposed of along with all pending application(s), if any.
32. 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)
JUDGE

MARCH 17, 2026

sw/sa