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

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Reserved on: 16.12.2025

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BAIL APPLN. 1429/2025**LYDIA KABUKAZI ALOYO**

.....Petitioner

Through: Mr. Aniruddha Singh Rajavat, Mr. Maneesh Bhardwaj, Mr. Ankur Jain, Ms. Prachi Vats and Mr. Rohan Kumar, Advocates.

versus

CUSTOMS

.....Respondent

Through: Mr. Shubham Tyagi SSC, CBIC and. Ms. Navruti Ojha, Adv.

CORAM:**HON'BLE MR. JUSTICE RAVINDER DUDEJA****JUDGMENT****RAVINDER DUDEJA, J.**

1. This is an application filed on behalf of petitioner Lydia Kabukazi Aloyo, under Section 483 of the Bhartiya Nagarik Suraksha Sanhita, 2023 ["BNSS"] read with Section 439 Cr. PC for grant of regular bail in Complaint No. 3409/2022, registered under Sections 8/21/23/28 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ["NDPS Act"], PS IGI Airport.



Brief Facts

2. The prosecution case, in brief, is that on 10.04.2022, the petitioner arrived at Terminal-3, IGI Airport, New Delhi from Sharjah. On the basis of suspicion, she was intercepted at the Green Channel by Customs officials. Despite no contraband being detected during baggage X-ray or DFMD screening, her conduct remained suspicious. Two independent *panch* witnesses were called, and the petitioner, along with her baggage, was taken to the Customs Preventive Room for further verification.

3. Notices under Section 50 of the NDPS Act and Sections 102 and 103 of the Customs Act, 1962 were duly served upon the petitioner. She was informed of her legal rights, including her right to be searched before a Gazetted Officer or a Magistrate. The petitioner, in writing, consented to the search being conducted by a lady Customs officer.

4. During further inquiry, the petitioner voluntarily disclosed that she had ingested capsules containing narcotic substances. Pursuant thereto, she was taken to Dr. Ram Manohar Lohia Hospital [RML Hospital], where she was admitted under medical supervision. During her hospitalization, the petitioner eased out a total of forty-two (42) capsules ingested by her over multiple days.



5. On 18.04.2022, after her discharge from the hospital, the said capsules were opened in the presence of independent *panch* witnesses. Upon testing, the contents were found to be Diacetylmorphine [Heroin]. The total recovered substance weighed approximately 462 grams, which is a commercial quantity under the NDPS Act.

6. Subsequently, the petitioner was arrested on 19.04.2022 and upon completion of investigation, a complaint was filed before the competent court.

7. The petitioner filed bail application which was dismissed by the court of Special Judge (NDPS)-02, Dwarka Courts, New Delhi [“trial court”] vide order dated 12.08.2024 primarily on the ground that petitioner was carrying commercial quantity of contraband and that embargo of section 37 NDPS Act is not lifted. Feeling aggrieved, the petitioner has filed the present application.

Submission on behalf of the Petitioner

8. Learned counsel appearing for the petitioner contended that the petitioner has been falsely implicated and that the prosecution case is vitiated due to non-compliance with mandatory provisions of the NDPS Act and the Customs Act.

9. It was argued that the petitioner was intercepted at the Airport on 10.04.2022 on basis of suspicion that she is carrying contraband



and the alleged recovery of contraband was effected from the petitioner by 12.04.2022, yet she was kept at the hospital till 18.04.2022. This extended stay of 6 days, it was argued, constitutes as illegal detention as the procedure under Section 103 of the Customs Act was violated, inasmuch as the petitioner was neither produced before a Magistrate nor was judicial permission obtained prior to extraction of the capsules from her body. The petitioner was arrested on 19.04.2022 and then produced before the Magistrate for the first time. Learned counsel submitted that such non-compliance strikes at the root of the prosecution case and the recovered contraband during the said period cannot be used to fasten any liability under NDPS Act against the petitioner who was in unauthorised detention.

10. Learned counsel also assailed the sampling process, submitting that the contents of all forty-two capsules were mixed together to create a homogenous mixture, in violation of Section 52A of the NDPS Act and Standing Order No. 1/88. According to the petitioner, such mixing of all the capsules together renders the samples unreliable.

11. It was further contended that the petitioner is a national of Uganda and has no criminal antecedents. It is stated that she has already undergone incarceration of almost 03 years 08 months and her jail conduct as per nominal roll is 'satisfactory'. The trial is



progressing slowly, and continued detention would amount to pre-trial punishment, infringing her right to life and personal liberty under Article 21 of the Constitution of India. It is submitted that the petitioner is willing to abide by the conditions imposed by this Court and it is prayed that the application be allowed and bail be granted to the petitioner.

Submission on behalf of the Respondent/Customs

12. Learned SPP for the Respondent/Customs vehemently opposed the bail application and submitted that the petitioner was apprehended with a commercial quantity of heroin, thereby attracting the statutory embargo under Section 37 of the NDPS Act.

13. It was argued that all statutory procedures and mandatory safeguards were duly followed. The petitioner was served with notices under Section 50 NDPS Act and Sections 102 and 103 of the Customs Act, and her consent was recorded in writing. The recovery was effected in a lawful and transparent manner and independent *panch* witnesses were associated at every material stage. Even though recovery was affected by 12.04.2022, she remained admitted in hospital as per doctor's advice for post-op care to avoid any ruptures.

14. Learned SPP submitted that the alleged violations regarding sampling, non-compliance of Section 52A, and procedural



irregularities are all matters of trial and cannot be conclusively examined at the stage of bail.

15. It was further contended that the petitioner being a foreign national has no permanent roots in India and poses a serious flight risk. The allegations against the petitioner are grave in nature and she is facing trial for carrying commercial quantity of contraband under the NDPS Act. Arguing that Court must not apply liberal approach in bail matters in cases involving commercial quantity of narcotic drugs, it is prayed that the bail application of the petitioner be dismissed.

Analysis and Reasoning

16. The main thrust of the petitioner's argument is founded on alleged non-compliance with procedural safeguards. It is submitted that the petitioner was intercepted by the Respondent/Customs on 10.04.2022, however, her formal date of arrest has been shown as 18.04.2022. It is submitted that during the said period, petitioner was not produced before the Magistrate. Thus, she was in unauthorized detention/custody being in violation of Section 103 of the Customs Act.

17. Section 103 of the Customs Act provides power to screen or X-Ray the body of a suspected person for detecting secreted goods. Section 103(3) of the Customs Act provides that where the Magistrate has reasonable ground for believing that such person has any such



goods secreted inside his body and 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. Similarly, Section 103(6) of the Customs Act provides that upon receipt of a report from a radiologist, if the Magistrate is satisfied that any person has any goods liable to confiscation secreted inside his body, he may direct that suitable action for bringing out such goods be taken on the advice and under the supervision of a registered medical practitioner and such person shall be bound by such directions.

18. Admittedly, no such orders, as aforesaid, were obtained from the Magistrate. However, a notice under Section 103 of the Customs Act was served upon the petitioner and in response to such notice, the petitioner voluntarily admitted to have concealed some capsules said to contain NDPS contraband inside her body and voluntarily submitted herself for suitable action to bring out such goods from her body. Section 103(8) of the Customs Act provides that if any such person admits that the goods liable to confiscation are secreted in his body and voluntarily submits himself for suitable action being taken for bringing out such goods, then in such situation, the aforesaid provisions shall not apply. The relevant portion reads as under:-

“103(8) Nothing in this section shall apply to any person referred to in sub-section (1), 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.”



19. In the present case, in response to notice under Section 103 of the Customs Act, petitioner has admitted to have concealed some capsules containing NDPS contraband inside her body and voluntarily submitted herself for suitable action to bring out such goods from her body. That being so, *prima facie*, it appears that provisions of Section 103(3), 103(4) & 103(6) of the Customs Act shall not apply in the present case. Even though the recovery of contraband had been effected from the petitioner till 12.04.2022, yet she was kept in the hospital till 18.04.2022. Whether or not this extended stay of the petitioner is due to medical reasons or otherwise is a matter to be tested during trial.

20. Insofar as, the argument of learned counsel for the petitioner relating to the alleged violation of Section 52-A NDPS Act and Standing Order No. 1/88, particularly on account of mixing of the contents of the capsules, is a matter to be tested during the trial and is not a ground for grant of bail. Section 52-A NDPS Act is directory in nature and its non-compliance in itself cannot render the actions of the Investigating Officer null & void. Further, in regards to the procedure under section 52 of NDPS Act, it shall be apposite to note that the Hon'ble Supreme Court in *Narcotics Control Bureau Vs. Kashif [2024 SCC OnLine SC 3848]* has held that any procedural irregularity or illegality found to have been committed in conducting the search or seizure of the accused during the course of investigation or thereafter,



would by itself not render the entire evidence collected during investigation as inadmissible, and any lapse or delay in compliance of Section 52A by itself would neither vitiate the trial nor would it entitle the accused to be released on bail.

21. The contraband recovered from the petitioner is in commercial quantity and is punishable with imprisonment for a term which shall not be less than 10 years, but may also extend to 20 years. The jurisdiction of the Court to grant bail in such cases is circumscribed by the provisions of Section 37 of the NDPS Act. It can be granted if there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail. It is the mandate of the legislature which is required to be followed. In order to control the drug menace, the Parliament has provided that the person/accused of offence under NDPS Act should not be released on bail during the trial unless the mandatory provisions of Section 37 are fulfilled. In *State of Kerala Vs. Rajesh*[(2020) 12 SCC 122], the Supreme Court reaffirmed that the power to grant bail under the NDPS Act is strictly governed by Section 37, which imposes mandatory twin conditions that must be satisfied before any accused involved in commercial quantity offence can be released. The Court held that no liberal or lenient approach is permissible, as such offences pose grave danger to public health and societal order. Drug trafficking not only affects individual victims but has a corrosive impact on the



fabric of society. In the present case, the gravity of the offence alleged against the petitioner cannot be understated.

22. On the basis of the record, it cannot be said that there is no material against the petitioner. The Petitioner's active participation and intent in ingesting the said contraband tablets suggests that she was consciously facilitating the illegal trade of the contraband. This is sufficient to establish *prima facie* conscious possession under the NDPS Act. The Supreme Court in the case of ***Mohan Lal Vs. State of Rajasthan [2015 (6) SCC 222]*** has clarified that conscious possession does not require physical custody alone but also an awareness of the presence of the contraband and control over it. In the present case, the Petitioner's actions and admission establish a strong *prima facie* case of knowledge and intent which sufficient to satisfy that she is not wrongfully framed and that she had conscious possession of contraband. In light of the above, there is a strong possibility that the Petitioner may abscond or otherwise interfere in the ongoing investigation if she is released on bail. The ingenious mode of concealment by itself is self-explanatory. Petitioner has thus failed to cross the threshold of Section 37 NDPS Act.

23. The petitioner, being a foreign national, may prove to be flight-risk, especially when the alleged offence involves a large quantity of contraband.



24. The allegations against the petitioner are grave and serious in nature. At this stage, the twin conditions imposed by Section 37 NDPS Act cannot be said to have been satisfied as there is sufficient evidence to hold a *prima facie* view, which does not exonerate the petitioner from guilt of committing the alleged offence. The Court is therefore not inclined to grant bail to the petitioner.

25. Petitioner has remained in custody for a period of more than 3 ½ years and the trial is progressing. It has been informed that 14 out of 32 witnesses have already been examined and an attempt may be made by the trial court to expedite the trial. In the event that the trial does not proceed ahead expeditiously, needless to state that petitioner will have the right to approach the court at a subsequent stage.

26. Bail application is accordingly dismissed.



RAVINDER DUDEJA, J.

DECEMBER 24, 2025/AK

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