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

Reserved on: 16.09.2025
Date of Decision: 27.09.2025

+ BAIL APPLN. 3306/2023

EKOI COLLINS CHIDUBEMPetitioner

Through: Mr. Aditya Aggarwal,
 Ms. Kajol Garg and Mr. Naveen Panwar,
 Advs.

versus

NARCOTICS CONTROL BUREAURespondent

Through: Mr. Arun Khatri, SSC with
 Ms. Shelly Dixit and Ms. Anisha Maan,
 Advs.

+ BAIL APPLN. 41/2025 & CRL.M.(BAIL) 799/2025

PRADEEP KUMAR JHAPetitioner

Through: Mr. Aditya Aggarwal,
 Ms. Kajol Garg and Mr. Naveen Panwar,
 Advs.

versus

NARCOTICS CONTROL BUREAURespondent

Through: Mr. Arun Khatri, SSC with
 Ms. Shelly Dixit and Ms. Anisha Maan,
 Advs.

CORAM:
HON'BLE MR. JUSTICE AJAY DIGPAUL

J U D G M E N T

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1. The present petitions have been filed under Section 439 of the Code of Criminal Procedure, 1973¹, seeking grant of bail to the accused persons/petitioners in Complaint No. VIII/44/DZU/2022

¹ Hereinafter "CrPC"



registered under Sections 8/21/23/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985², at P.S. NCB.

2. As both the petitioners have been arrayed as co-accused in the above complaint and have taken identical pleas seeking grant of bail, these petitions are being dealt with and considered by this Court by way of a common judgment.

CASE OF THE PROSECUTION:

3. It is the case of the prosecution that on 20.05.2022, acting upon secret information, the NCB team reached DHL Express Pvt. Ltd., Rama Road, near Kirti Nagar, New Delhi, and enquired about a parcel bearing AWB No. 3385037946. The parcel was produced by one Ashit Yadav, Supervisor who also agreed to join the proceedings as an independent witness. The parcel was a yellow coloured DHL plastic polythene. The airway bill slip disclosed the consignor as Joseph Mandy, 118, West Street, Sandton, 2031, Sandown Gauteng, South Africa and the consignee as the petitioner, Pradeep Kumar Jha, Dharuhera, Haryana.

4. On opening, one blue-coloured-zip locked file folder was found inside. Two packets wrapped in black carbon paper were recovered from the folder. Both packets contained off-white powdery substance, which on testing was found to be heroin, weighing 376 grams and 374 grams respectively, totaling 750 grams. The contraband and packing material were seized and sealed *vide* panchnama dated 20.05.2022.

² Hereinafter "NDPS Act"



5. On 21.05.2022, the NCB team visited the residence of the petitioner, Pradeep Kumar Jha, who admitted knowledge of the parcel and showed the airway bill on his mobile phone. Certain DHL documents and other material were recovered from his house. In his voluntary statement under Section 67 NDPS Act, he disclosed that parcels were being sent from South Africa by one Martin Gary and were regularly handed over by him to a Nigerian national in Delhi in lieu of monetary consideration. He admitted that the present parcel was also to be delivered at Sunil Dairy, Gali No. 22, Sant Garh, Tilak Nagar, New Delhi.

6. In the evening, the NCB team accompanied by the petitioner, Pradeep Kumar Jha to the said location, where, at his instance, one person came to collect the parcel and was apprehended. He disclosed his identity as Ekoh Collins Chidubem, the present petitioner. From his possession, Rs. 27,500/- was recovered, which he admitted was the consideration to be paid to the petitioner, Pradeep Kumar Jha for the present consignment. In his voluntary statement, he disclosed that he had earlier collected 7-8 parcels from the petitioner, Pradeep Kumar Jha on instructions of his South African associate, namely Uche, and that the present consignment was also arranged by the same person.

7. Both the petitioners were arrested on 22.05.2022. their mobile phones were seized, mirror images extracted, and chats were found with *Franklin Uche Aneke @ Edward P. Anderson @ Frank Anka @ Jospeh Mendy @ Martin Gary*, corroborating their complicity in drug trafficking.



8. It is alleged that Call Detail Record³ analysis established their regular communication. It was further found that the passport of the petitioner, Ekoh Collins Chidubem, was forged.

9. On the basis of the above material, a complaint under Sections 8/21/23/29 NDPS Act has been filed.

10. The learned Special Judge, NDPS, *vide* order dated 16.09.2023, rejected the bail application of petitioner, Ekoh Collins Chidubem, and *vide* order dated 19.12.2024, rejected the bail application of petitioner, Pradeep Kumar Jha, observing in both orders that recovery of a commercial quantity of heroin stood established from the DHL parcel and that there was substantive material linking the petitioners to the conspiracy of drug trafficking. It was held that the rigours of Section 37 NDPS Act squarely applied, and therefore, no grounds existed to enlarge the petitioners on bail.

Submissions of the Learned Counsel for the petitioners:

11. Learned counsel for the petitioners submits that the petitioner, Pradeep Kumar Jha was initially apprehended from his residence at Rewari, Haryana, as his name, contact and address were on the parcel. On his disclosure, the respondent intercepted Ekoh Collins Chidubem near Sunil Dairy, Sant Garh, Tilak Nagar when he arrived to meet the petitioner, Pradeep Kumar Jha for delivery of the parcel to a third person. Learned counsel emphasizes that the petitioner, Ekoh Collins Chidubem's arrest was solely on the basis of the petitioner, Pradeep Kumar Jha's disclosure, no contraband or material pertaining to the parcel was recovered from him.

³ Hereinafter "CDR"



12. Mr. Aggarwal urges that the petitioner, Ekoh Collins Chidubem was neither the consignor nor the consignee of the parcel, and the chats relied upon by the prosecution, with a person named *Frank Anka*, do not implicate the petitioner in drug trafficking.

13. It is further submitted that the petitioner, Pradeep Kumar Jha's role was limited to transportation of the parcel, engaged by a company named Alert Security, and he was not involved in packing, sending, or receiving the parcel. Further, the money transaction of Rs. 7,400/- between the petitioners is nominal and does not indicate any benefit from dealing in contraband.

14. He further contends that there was considerable delay in the proceedings under Section 52A NDPS Act. While the contraband was seized on 20.05.2022, the application for sampling was filed on 30.05.2022 and samples were drawn before the Magistrate on 06.08.2022, resulting in a delay of 78 days. Learned counsel relied upon various judgments, including *Rishi Dev @ Onkar Singh vs. State*⁴, *Mohan Lal vs. Union of India*⁵ and *Sarvotham Guhan @ Sarvo vs. NCB*⁶, wherein it was held that such delay is fatal to the prosecution and entitled the accused to bail.

15. It is also pointed out that there is a material discrepancy in the colour of the contraband. While the recovery memo records the substance as off-white, the FSL report dated 19.09.2022 describes it as brownish coarse powder with lumps. Reliance is placed on the judgement in *James Eazy Franky vs. DRI*⁷, which emphasizes that

⁴ 2008 SCC OnLine Del 1800

⁵ (2016) 3 SCC 379

⁶ 2023 SCC OnLine Del 5634

⁷ 2012 SCC OnLine Del 3006



discrepancies in the sample and the risk of tampering during custody affect the probative value of the recovery.

16. Counsel further submits that the petitioners' statements and other material relied upon by the prosecution, including WhatsApp chats and phone record, are matters to be examined at trial and cannot be considered conclusive at the stage of bail as has been laid down by the Apex Court in *Tofan Singh vs. State of Tamil Nadu*⁸.

17. It is also submitted that the petitioners have been in judicial custody since 22.05.2022, i.e., over three years. Prolonged incarceration in the absence of trial completion militates against Article 21 of the Constitution, as recognized in *Rabi Prakash vs. State of Odisha (2023)*⁹ and *Man Mandal vs. State of West Bengal*¹⁰. The petitioners have no prior criminal antecedents and run legitimate businesses in India. Allegations regarding a purported fake passport are unfounded, as a valid passport was submitted for verification.

18. In the view of the above, it is submitted that the statutory embargo under Section 37 NDPS should not preclude the grant of bail to the petitioners, having regard to the absence of recovery from them, the nominal consideration involved, their lack of knowledge of the contraband, and the prolonged period of custodial detention.

Submission of the respondent-NCB

19. *Per contra*, Mr. Arun Khatri, Sr. Standing Counsel, relying heavily on the Status Report filed before this Court, contends that the present case is not based solely upon voluntary statements under

⁸ (2021) 4 SCC 1

⁹ 2023 SCC OnLine SC 1109

¹⁰ 2023 SCC OnLine SC 1868



Section 67 NDPS Act, but also upon independent recovery of contraband, public witnesses, digital evidence, and financial transactions between the petitioners, thereby demonstrating their active role in an organized drug-trafficking syndicate.

Analysis & Conclusion

20. This Court has considered the submissions of the learned counsels for the parties and perused the record.

21. It is the case of the petitioners that the petitioner, Ekoh Collins Chidubem, was apprehended solely on the basis of disclosure made by the co-accused/petitioner, Pradeep Kumar Jha, and that no contraband or incriminating material was recovered from them personally. It is also their case that the petitioner, Pradeep Kumar Jha, was merely involved in the transportation of the parcel as an employee of a logistics agency, and the nominal monetary transaction alleged between the petitioners does not implicate them in trafficking of contraband. Learned counsel has also raised alleged delays in Section 52A proceedings and discrepancies in the colour of the contraband as mitigating factors in favour of grant of bail.

22. While these submission merit meticulous scrutiny at the stage of trial and are not conclusive for the purpose of deciding bail, it becomes incumbent upon this Court to advert to the authoritative pronouncement of the Hon'ble Supreme Court in ***Narcotics Control Bureau vs. Kashif¹¹***, wherein the legal position has been lucidly elucidated as follows:

“23. As demonstrated above, sub-section (2) of Section 52A specifies the procedure as contemplated in sub-section (1) thereof,

¹¹ 2024 SCC OnLine SC 3848



for the disposal of the seized contraband or controlled narcotic drugs and psychotropic substances. Any deviation or delay in making the application under subsection (2) by the concerned officer to the Magistrate or the delay on the part of the Magistrate in deciding such application could at the most be termed as an irregularity and not an illegality which would nullify or vitiate the entire case of the prosecution. The jurisprudence as developed by the courts so far, makes clear distinction between an “irregular proceeding” and an “illegal proceeding.” While an irregularity can be remedied, an illegality cannot be. An irregularity may be overlooked or corrected without affecting the outcome, whereas an illegality may lead to nullification of the proceedings. Any breach of procedure of rule or regulation which may indicate a lapse in procedure, may be considered as an irregularity, and would not affect the outcome of legal proceedings but it can not be termed as an illegality leading to the nullification of the proceedings.”

23. In the present case, this Court notes that the samples in this case were drawn under the authority of the learned Magistrate pursuant to Section 52A NDPS Act on 06.08.2022, a Saturday, and were submitted to the CRCL on 08.08.2022, a Monday, within 72 hours of sampling. The samples were found to be intact, properly sealed, and bore the Court seal. There is no violation of procedure, and any perceived delay does not amount to illegality capable of undermining the prosecution’s case.

24. As regards the alleged discrepancy in the colour of the contraband, the seizure memo records the substance as off-white, whereas the CRCL report describes it as brownish coarse powder.

25. To analyze the argument, it would be apposite to refer to relevant portion of the FSL Report which reads as follows:

“Report:-

CLD No.1799-1800 (N)- Each of the two samples is in the form of Brownish coarse powder and small lumps. On the basis of Chemical, Chromatographic and Spectroscopic examinations, it is concluded that each of the two samples under reference answers positive test for Diacetylmorphine (Heroin) along with Caffeine.”



26. It is manifest that the term “off-white” constitutes a generic descriptor, encompassing a spectrum of shades. The seizing officers designated the contraband as “off-white” at the time of recovery cannot, in any manner, detract from the analysis undertaken by the forensic experts, who, by virtue of their training and expertise, are far better equipped to discern and classify the precise hue. To allow the petitioners to claim bail merely on the basis of a minor variation in shade, without affording the Investigating Officer the opportunity to elucidate the discrepancy, would be manifestly inequitable. Consequently, this ground cannot be availed of by the petitioners. It is reiterated that such contentions pertain to matters of trial, and are not determinative at the stage of consideration for bail.

27. The petitioners’ contentions that they were mere transporters, that the monetary consideration involved was nominal, or that they had no active role in the handling or transportation of the consignment, are all issues that fall squarely for determination at the trial stage. The weight, credibility, and implications of such contentions can only be assessed upon a full appraisal of the evidence led during trial and cannot serve as a basis for determining bail at this stage. Moreover, the Call Detail Records demonstrate that, around the time of the incident, the petitioners were in regular communication with one another as well as with the consignee of the parcel from which the contraband was recovered. These communications, when read in conjunction with the WhatsApp chats, *prima facie* provide substantial material implicating the petitioners. Whether the financial transactions between the petitioners, and the contents of the



WhatsApp communications, relate to the contraband can only be ascertained after the evidence is fully examined in the course of trial.

28. The assertion made by the petitioner, Ekoh Collins Chidubem, that his implication is largely predicated upon the disclosure statement of the co-accused, Pradeep Kumar Jha and that the same is a ground for bail, is unfounded. It is observed that the disclosure statement is not the only basis to account for the petitioner's implication in the present matter, rather the same is further corroborated by the seizure of the contraband, independent witness accounts, CDRs, financial transactions, and digital communications, all of which collectively provide a *prima facie* case against the petitioners.

29. While the duration of detention is a relevant factor, as urged by the petitioners, it cannot, in the face of commercial quantity recovery and *prima facie* evidence, suffice to override the bar of Section 37 NDPS Act. The Court must balance personal liberty against the need to prevent further risk to public safety and ensure the administration of justice. In the considered view of this Court, the incarceration already undergone by the petitioners does not, at this stage, constitute a sufficient ground to enlarge them on bail, particularly when the trial has commenced and the matter is presently at the stage of prosecution evidence.

30. The quantity of contraband allegedly involved in the present case is admittedly commercial. In view thereof, the provisions of Section 37 NDPS Act are squarely attracted. Once the rigours of Section 37 NDPS Act are invoked, the Court can grant bail only upon satisfaction of the twin conditions stipulated under Section 37(1)(b)



NDPS, in addition to the usual criteria for grant of bail. Specifically, the Court must be satisfied that (i) there are reasonable grounds for believing that the person is not guilty of such offence; and (ii) the accused is not likely to commit any offence while on bail.

31. Having regard to the nature of recovery, the commercial quantity of the contraband involved, the clandestine manner in which the conspiracy was executed, and the cumulative material on record, including voluntary statements, bank transaction, CDRs, and WhatsApp chats linking the petitioners to the consignment, it is evident that the statutory conditions under Section 37 NDPS Act are not satisfied. At this stage, the Court is not *prima facie* satisfied that the petitioners are not guilty of the alleged offence or that they are unlikely to commit an offence while on bail.

32. It is further pertinent to note that the petitioner, Ekoh Collins Chidubem, is a foreign national residing without valid documentation, thereby creating a substantial risk of absconding or evading the course of justice.

33. Keeping in mind the overall facts and circumstances of the present case, it stands established that a commercial quantity of heroin was recovered. The role of the petitioner, Pradeep Kumar Jha, has come forth inasmuch as he was to receive the said contraband, and in his disclosure, he has categorically stated that the same was intended to be handed over to the petitioner, Ekoh Collins Chidubem. These circumstances, taken together *prima facie* indicate the modus operandi adopted in the present transaction. Ignorance of the nature or contents



of the contraband cannot be taken as a defence and shall not enure to the benefit of the accused.

34. In view of the foregoing, the Court finds that the petitioners are not entitled to the grant of bail.

35. Needless to state, any observation touching upon the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on merits of the case.

36. Accordingly, the bail petitions, along with other pending application(s), if any are dismissed.

37. The judgment be uploaded on the website forthwith.

AJAY DIGPAUL, J.

SEPTEMBER 27, 2025/AS/dd