



* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Pronounced on: 19th September, 2025

+ BAIL APPLN. 2305/2025, CRL.M.A. 18367/2025

NAQIBULLAH RODAIE

S/o Abdul Qayyum
R/O -House No. 3rd Block,
Alizai, Marza, Helmand Province,
Afghanistan

.....Applicant

Through: Mohd. Suza Faisal and Mohd. Kashif,
Advocates.

versus

AIR CUSTOMS, IGI AIRPORT, NEW DELHI

New Delhi through it's Commissioner

.....Respondent

Through: Ms. Anushree Narain, Senior
Standing Counsel for Respondent-
Custom.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Application for regular bail has been filed under Section 483 Bharatiya Nagarik Suraksha Sanhita, 2023,(BNSS) on behalf of the *Applicant Naqibullah Rodaie*, in case S.C. No. 434/2021, for offences punishable under *Sections 21, 23, and 29* of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the "NDPS Act").

2. *Briefly stated*, on 25.01.2021, the Applicant, Mr. Naqibullah Rodaie, and a co-accused, Mr. Ghazi Barakzai, both Afghan nationals, arrived at



Terminal-3 of the Indira Gandhi International (IGI) Airport, New Delhi, from Dubai. After they crossed the Green Channel, they were intercepted by Air Customs officers, based on intelligence inputs. As the accused persons only spoke Pashto, an independent interpreter was called. During preliminary questioning, both accused admitted to having concealed contraband inside their bodies. Notice under Section 102 of the Customs Act, 1962, and Section 50 of the NDPS Act were served upon them. They were then taken to RML Hospital for medical examination, where X-rays confirmed the presence of foreign objects in their bodies.

3. Between 25.01.2021 and 29.01.2021, the Applicant, Naqibullah Rodaie, excreted a total of 113 capsules. The co-accused excreted 95 capsules. The substance from the capsules excreted by the petitioner weighed 905 grams, and upon testing with a Field Drug Detection Kit, it ***tested positive for Heroin***. The total recovery from both accused persons was ***1,635 grams of Heroin***.

4. The Applicant was arrested on 30.01.2021 and has been in judicial custody since. Charge Sheet was filed and the case is pending trial. Charges were framed on 10.05.2022 and out of 13 prosecution witnesses, two have been examined.

5. The Ld. Counsel for the Applicant has sought Bail primarily on the grounds that the mandatory procedures under Section 50 of the NDPS Act and Section 103 of the Customs Act were not followed. The Applicant was not produced before the nearest Magistrate, which vitiates the proceedings.

6. The Applicant has been in custody for nearly four years and five months, and the trial is proceeding slowly, with only two of the 13 Prosecution witnesses having been examined till date.



7. The Applicant is the sole bread earner for his family, which is facing immense distress due to his incarceration. It is contended that the Applicant is not a flight risk and will not tamper with any witnesses or evidence.

8. **The Respondent has filed a counter-affidavit to the Bail Application** wherein the facts as detailed above have been reiterated. It is stated that the Applicant is involved in nefarious activities, corrupting society at its core by providing drugs that act like poison. Balancing individual liberty with societal interests, the recovery of contraband from accused highlights the gravity of the offense under the NDPS Act, posing significant harm to public health and safety.

9. It is submitted that there are prima-facie reasons to infer the involvement of applicant in a dangerous drug trade, which is causing serious erosion in the societal fabric and ultimately, the very security and integrity of the Nation.

10. It is submitted that there is no such delay in trial in the present matter, and the witnesses have to be examined for the trial to proceed in accordance with law. Furthermore, the statutory presumptions under Sections 37 and 54 of the NDPS Act operate strictly against the accused and must be rebutted by the Applicant through specific and concrete evidence.

11. It is further submitted that that gravity of Offence, Value and Quantity, Character of Evidence, larger Interest of Society and Nation, have also to be taken into consideration, while considering the interim Bail Application of the accused.

12. Reliance has been placed on Union of India vs. Shiv Shanker Kesari (2007) SCC 798, Union of India vs. Ram Samujh (1999) 9 SCC 429, State of Punjab vs. Balbir Singh (1994) 3 SCC 299, State of Madhya Pradesh vs.



Kajad-IT 2001 (7) SC 560, Narcotics Control Bureau vs. Mohit Aggarwal, 2022 SCC On Line SC 891 and Achint Navinbhai Patel alias Mahesh Shah vs. State of Gujrat & Anr. (2002) 1 o sec 529

13. Ld. Counsel for the Applicant has argued that the Accused was arrested on 30.01.2021; however he had been apprehended on 25.01.2021. It is contended that there is gross violation of Section 103 Customs Act and Section 50 of NDPS Act, as the accused was not informed of his right to be searched by a gazetted officer.

14. It is further contended there are 39 prosecution witnesses and only 5 have been recorded. The trial is going to take long and any further custody would amount of pre-conviction incarceration.

15. The **Ld. Standing Counsel** on behalf of the State has vehemently opposed the Bail Application on the grounds that the recovery from the Applicant is of 905 grams of heroin, which is a commercial quantity, thereby attracting the rigors of Section 37 of the NDPS Act.

16. The *twin conditions* for granting Bail under Section 37 NDPS Act, are not satisfied. There are no reasonable grounds to believe that the Applicant is not guilty of the offence nor is there any basis to believe that he is not likely to commit any offence while on Bail.

17. Reliance is placed on the Judgment of the Apex Court in Narcotics Control Bureau v. Mohit Aggarwal, 2022 SCC OnLine SC 891, wherein it was held that the length of custody or the filing of a Chargesheet are not by themselves persuasive grounds for granting bail under Section 37.

18. It is further submitted that the Applicant is an Afghan national with no roots or family in India. If released on Bail, there is a very high probability that he will abscond and evade the trial.



19. Drug trafficking is a grave offence that poses a hazard to society. A liberal approach in such matters is uncalled for, as established in Union of India v. Ram Samujh, (1999 (9) SCC 429.

Submissions heard and record perused.

20. The present case involves the recovery of 905 grams of Heroin, a commercial quantity, which was concealed by the petitioner inside his body and excreted over several days, while under observation at a hospital. The primary question before this court is whether the petitioner is entitled to Bail, keeping in view the stringent conditions laid down in Section 37 of the NDPS Act.

21. Section 37 of the NDPS Act, 1985, carves out a special provision for bail in respect of certain offences, including those involving a commercial quantity of narcotics. It reads:

“37. Offences to be cognizable and non-bailable - (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) - (b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless –
(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and
(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.”

22. The provision lays down *two mandatory conditions*, commonly known as the “twin tests,” that must be satisfied before bail can be granted. The court must have “*reasonable grounds for believing*” that the accused is



“not guilty” and is “*not likely to commit any offence*” if released. This standard is significantly higher than the one for granting bail in other criminal cases.

23. The contention of the Applicant regarding non-compliance with Section 50 of the NDPS Act and Section 103 of the Customs Act is a matter of trial. The record *prima facie* indicates that Notices were served upon the accused and the recovery itself was not from a personal search but from the voluntary excretion of capsules from his body in the Hospital, after the same was detected at the Airport and was admitted to having been concealed by the Applicant. The evidence, including the statements of Customs Officers and medical personnel, *prima facie* establish conscious possession.

24. At the stage of Bail, this court cannot conduct a mini-trial to determine the validity of the procedures, which is a matter of trial, as held in the case of Lt. Col. Prasad Shrikant Purohit v. State of Maharashtra, (2018) 11 SCC 458, wherein it was held as under:

“29. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider, among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.



(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge.”

25. Based on the material on record, there is no basis to form a belief, even on a preliminary basis, that the petitioner is “**not guilty.**”

26. The ***second parameter*** of the twin test is that the Applicant is not likely to commit the offence, if released on Bail. Given the nature of the crime and the modus operandi, it cannot be said that he is “*not likely to commit any offence*” while on Bail. The Offence of drug trafficking is a menace to society, and the legislative intent behind Section 37 is to keep such offenders from returning to their nefarious activities.

27. The other grounds agitated is the delay and that the Applicant has been in custody since 30.01.2021, and the trial is likely to take long since only 5 out of 39 Prosecution witnesses have been examined till date. There may be some prosecution witnesses yet to be examined, but the time being taken in conclusion of trial may be one of the relevant factors, but the same has to be weighed in the context of gravity of offence. Here is a case where the Applicant was trying to import into India 905 grams of Heroin in the form of 113 capsules concealed by injecting them in his stomach. They had to be flushed out by keeping him in the Hospital.

28. The Apex Court in Mohit Aggarwal (supra) has held that the length of the period of custody is not a determinative factor for granting Bail under Section 37. The gravity of the Offence and the stringent bar of the statute must be given precedence.

29. In Criminal Appeal No.(s) 154-157 of 2020, State of Kerala Vs. Rajesh and others, the Apex Court has held liberal approach in the matter of



bail under the NDPS Act, is uncalled for. The Apex Court in Anil Kumar Yadav Vs. State (N.C.T.) of Delhi and another, 2018(1) SCC 117 is that in serious crimes, the mere fact that the accused is in custody for more than one year, may not be a relevant consideration to release the accused on Bail.

30. The Applicant is a foreign national from Afghanistan with no discernible ties in India. The possibility of his absconding, given the porous nature of international borders and the resources that international drug syndicates possess, cannot be overlooked. The risk of him fleeing from justice is palpable and extremely high. If he absconds, the entire trial would be rendered futile.

31. Applying the *twin tests of Section 37 NDPS Act*, this court finds that the Applicant has failed to satisfy either of them. The recovery of 905 grams of Heroin from inside his body establishes a strong *prima facie* case of conscious possession. There are no “*reasonable grounds*” to believe he is not guilty.

Conclusion:

32. In view of the above analysis, considering the recovery of a **commercial quantity of Heroin**, the strong *prima facie* case against the Applicant, the failure to meet the mandatory twin conditions laid down in **Section 37 of the NDPS Act**, and the grave risk of the Applicant, absconding if released on Bail, no case is made out for grant of Bail.

33. The Bail Application is, therefore, dismissed.

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 19, 2025