

Beneth Chukuwuddi vs State Of Nct Of Delhi on 17 March, 2025

Author: Sanjeev Narula

Bench: Sanjeev Narula

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IN THE HIGH COURT OF DELHI AT NEW DELHI
BAIL APPLN. 4295/2024
BENETH CHUKUWUDDI

STATE OF NCT OF DELHI
Through:

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA
ORDER

% 17.03.2025

1. The present application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (formerly Section 439 of the Code of Criminal Procedure, 1973) seeks regular bail in proceedings arising from FIR No. 63/2023 registered under Sections 21/25/29/22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at P.S. Crime Branch.

2. Briefly, the case of the prosecution is as follows:

2.1. On 10th March, 2023, at approximately 2:30 PM, ASI Mahesh of AGS/Crime Branch received information that one Mr. Baljeet @ Aman was engaged in the trafficking of narcotic substances, which he procured from Nigerian nationals. The information further indicated that between 4:30 PM "BNSS"

"Cr.P.C."

"NDPS Act"

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The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 18/03/2025 at 22:29:31 and 5:30 PM, he would deliver a consignment of MDMA and cocaine to a customer. Acting on this input, a raiding team was formed and the team proceeded to the location with the informer.

2.2. At around 4:15 PM, the team reached near Indian Modern School, Chattarpur Enclave, where the informer pointed out a building at the end of the street, identifying it as Mr. Baljeet's residence. The informer further disclosed that Nigerian nationals routinely supplied MDMA and cocaine to Mr. Baljeet @ Aman in the parking area of the said building and another such delivery was expected shortly which is expected to be passed on to someone in Chattarpur. The team took positions and set up a trap in the parking area.

2.3. At approximately 5:15 PM, a Nigerian national arrived on a two-wheeler and waited in the parking area. Shortly thereafter, an individual exited the building's lift and approached the Nigerian national. After exchanging a handshake, the Nigerian national retrieved a transparent polythene packet from his jeans and handed it to Mr. Baljeet. The packet contained 3 smaller white polythene packets. After inspecting the contents, Mr. Baljeet placed them back inside the transparent packet and began to leave. At this point of time, the raiding team moved in to apprehend them. Upon spotting the raiding party, the Nigerian national attempted to flee, while ASI Mahesh and HC Yogesh pursued Mr. Baljeet, who tried to enter his house and discarded the packets near the right side of the gate. The Nigerian national was later identified as one Mr. Daniel. Both accused were apprehended, and a notice under Section 50 of the NDPS Act was served upon them, informing them of their right to be searched before a Gazetted This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 18/03/2025 at 22:29:31 Officer, however, they declined the same. Upon search, 51 grams of cocaine, 35 grams of MDMA and 60 Ecstasy tablets were recovered from the packet handed over to Mr. Baljeet by Mr. Daniel. Both accused were arrested on 11th March, 2023.

2.4. During their 3 days police remand, accused Mr. Daniel led the police to Mehta Chowk, Mehrauli, where he identified another Nigerian national, Mr. Beneth Chukuwuddi (the Applicant), as his supplier of the contraband. Upon seeing the approaching police, the Applicant attempted to flee, discarding the bag in the process, however, he was eventually overpowered. In compliance with the NDPS Act, a notice under Section 50 was served, informing him of his rights, but he declined to have his search conducted before a Gazetted Officer. Upon examining the discarded bag, the police recovered INR 36,000 in cash, 157 grams of heroin, 57 grams of MDMA, and 28 pink MDMA tablets (weighing 12 grams), similar to those previously seized from accused Mr. Baljeet and Mr. Daniel.

2.5. On 14th March, 2023, the recovered contraband was sampled in accordance with Section 52A of the NDPS Act and subsequently sent to FSL for expert analysis. The FSL report confirmed that the recovered substances were narcotic and psychotropic substances covered under the NDPS Act.

3. Counsel for the Applicant argues that he has been falsely implicated and urges the following in support of his request for bail:

3.1. The Applicant has been in custody for more than two years, yet charges have not been framed. The trial proceedings remain stayed by a Co-

ordinate Bench of this Court, therefore, the conclusion of trial is likely to This is a digitally signed order.

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3.2. A material contradiction exists between the DD entry and the statement of recovery witness HC Yogesh Kumar recorded under Section 161 of the Code of Criminal Procedure, 1973.4 While GD No. 0008A dated 14th March, 2023, indicates that the seizure memo and pullandas were prepared at the spot, the recovery witnesses' statements under Section 161 Cr.P.C. suggests that the same were prepared at the police station. This inconsistency casts doubt on the prosecution's case. 3.3. The case against the Applicant is fabricated. A separate DD entry records that one Mr. Michael was apprehended at the instance of co-accused Mr. Daniel. However, the chargesheet fails to explain why Mr. Michael was not made an accused, raising doubts about the fairness of the investigation and suggesting false implication.

3.4. Despite having ample opportunity, the investigating agency failed to secure any independent witnesses to corroborate the recovery. Moreover, the absence of videographic or photographic evidence of the alleged seizure further casts doubt on the authenticity of the prosecution's claims.

3.5. Since the main accused has been enlarged on bail, the Applicant is entitled to same relief on the grounds of parity.

3.6. The Applicant has clean antecedents and undertakes to abide by the conditions of bail, if the same were to be granted by this Court.

4. On the other hand, Mr. Mukesh Kumar, APP for the State strongly opposes the bail application and urges the following:

4.1. Since the contraband recovered from the Applicant is commercial in This is a digitally signed order.

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4.2. The Applicant is not a mere courier but a primary supplier in the syndicate. As per the Call Detail Records, he was in regular contact with both co-accused persons, Mr. Baljeet and Mr. Daniel, indicating his active role in drug trafficking.

4.3. GD No. 0008A records that after the Applicant was apprehended, a large group of African nationals gathered at the scene, making it difficult for the police to complete the seizure proceedings on-site. Owing to the chaotic circumstances, the contraband was seized at the police station instead, which does not vitiate the recovery process.

5. The Court has considered the facts and the submissions advanced.

6. The contraband recovered from the Applicant comprises 157 grams of Heroine, 57 grams of Metamfetamine and 12 grams of MDMA (28 tablets of Ecstasy). Although the quantity of heroine recovered falls within the intermediate category, the amount of Metamfetamine and MDMA tablets recovered qualify as a commercial quantity under the NDPS Act. As a result, the twin conditions under Section 37(1)(b)(ii) of the NDPS Act are attracted, which provides that the Court can grant bail only after hearing the public prosecutor and upon being satisfied of the following twin conditions:

(i) that there are reasonable grounds to believe that the accused is not guilty of the offence and (ii) that the accused is not likely to commit any offence while on bail.

Absence of Independent Witnesses "Cr.P.C"

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7. The Applicant has raised the issue of the prosecution's failure to include independent witnesses during the search and seizure operations, despite the Applicant's apprehension occurring in a public place. He argues that the lack of independent witnesses casts doubt on the fairness and credibility of the prosecution's case.

8. It is to be noted that the raiding party, acting on information received on 10th March, 2023, had sufficient time to secure independent witnesses before conducting the raid. However, no reasonable explanation has been provided for this omission. Since the alleged recovery took place in a public area, where securing independent witnesses would not have posed any practical difficulty, this lapse reflects a lack of diligence on the part of the investigating agency. While the absence of independent witnesses may not be fatal to the prosecution's case per se, it does impact the transparency and reliability of the search and seizure process, particularly at the bail stage, where the Court must assess whether a prima facie case has been made out against the accused.

9. This Court in *Bantu v. State Government of NCT of Delhi*,⁵ took note of the frequent and mechanical explanations offered for the non-joinder of independent witnesses in cases involving the seizure of contraband. It was observed that the absence of independent witnesses, especially in crowded public places, warrants careful judicial scrutiny. This practice undermines the transparency of the seizure procedure and weakens the evidentiary value of the recovery. In the present case, the failure to associate independent witnesses, despite the raid occurring in a public location, indicates a lapse in This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 18/03/2025 at 22:29:31 the search process. While such lapses do not, by themselves, render the recovery invalid, they diminish the evidentiary value of the seizure and introduce reasonable doubt about the integrity of the prosecution's case, which becomes particularly relevant in cases under the NDPS Act, where strict compliance with procedural safeguards is imperative given the severe consequences involved.

Omission of Videography and Photography

10. The Applicant also points out the prosecution's failure to produce any videographic or photographic evidence of the alleged recovery.

11. The Supreme Court, in the case of Shafhi Mohd. v. State of H.P.⁶ emphasised that the video or photographic documentation of a crime scene, serves as a critical safeguard, ensuring transparency and accountability in the handling of evidence. Further, in Bantu, this Court observed that in instances where videography or photography has not been undertaken, the prosecution can provide clear and valid justifications for such omissions. These judicial observations were made even prior to the enactment of the mandatory videography and photography requirements under the BNSS, illustrating that the Court has recognized the vital role of such documentation in ensuring the fair administration of justice.

12. In the present case, the prosecution has failed to offer any justification for not implementing the essential measure of videography or photography during the recovery process. Such documentation is not merely a procedural formality, but a safeguard to ensure transparency and fairness, particularly in 2024 SCC OnLine Del 4671 (2018) 5 SCC 311 This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 18/03/2025 at 22:29:31 cases involving narcotic substances. The absence of this safeguard leaves the recovery process open to question, as there is no independent evidence to corroborate the police's account. This omission, coupled with the lack of independent witnesses, casts a shadow over the credibility of the evidence and increases the potential for prejudice against the accused. Sanctity of Seizure Memos

13. The Applicant also highlights the inconsistencies in the DD entry and the statement of the recovery witness regarding the preparation of the seizure memo and pullandas.

14. It is well-settled that when contraband is recovered from an accused, the seizure memo and pullandas must be prepared at the crime scene itself to ensure transparency and procedural integrity. In Major Singh v. State of Rajasthan,⁷ the High Court of Rajasthan held that conducting these formalities within police premises, away from the place of recovery, compromises the credibility of the seizure process. Any deviation from this established procedure undermines the authenticity of the prosecution's case, raising doubts about whether the recovery actually took place as alleged.

15. In the present case, the prosecution concedes that the seizure memo was prepared at the police station rather than at the scene of the alleged recovery. The justification provided for this deviation is that a group of African nationals, who gathered at the scene, made it difficult for them to complete the documentation on-site. However, whether this justification is valid and whether the alleged circumstances genuinely prevented the police from adhering to due procedure are matters that warrant closer scrutiny at This is a digitally signed order.

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16. Furthermore, the State's justification that the discrepancy regarding the version of the prosecution relating to the place of seizure. In GD No. 0008A dated 14th March, 2023, it has been recorded that the seizure memo was prepared at the place of search, however, the statement of recovery witness under Section 161 of Cr.P.C. states that the seizure memo and the pullandas were prepared at the police station. Such an explanation does not adequately address the procedural lapse.

17. In view of the above, prima facie the first condition under Section 37(1)(b)(ii), in satisfied favour of the Applicant.

18. As regards the second condition of Section 37(1)(b)(ii), it must be noted that the Applicant has no criminal antecedents. The absence of any prior criminal record is a significant factor, as it distinguishes the Applicant from habitual or repeat offenders. This supports the conclusion that the Applicant is unlikely to commit any offence while on bail. Delay in Trial

19. Additionally, it is pertinent to note that the Applicant has been in custody for 2 years. Although the chargesheet has been filed, the charges are yet to be framed and there is no indication that the trial will conclude in the foreseeable future.

20. The right to life and personal liberty, enshrined under Article 21 of the Constitution of India, 1950, cannot be rendered nugatory by unwarranted Bail Application No. 5457/2024 dated 8 th May, 2024 This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 18/03/2025 at 22:29:31 delays in the judicial process. The prolonged incarceration undermines the fundamental right to personal liberty. The extended period of custody, combined with the delay in trial, justifies the Applicant's plea for conditional liberty through the grant of bail, thereby balancing the rights of the accused with the requirements of justice.⁸

21. In view of the foregoing discussion, this Court is of the opinion that the Applicant is entitled to be enlarged on bail and the Applicant is directed to be released on bail on furnishing a personal

bond for a sum of INR 50,000/- with one surety of the like amount, subject to the satisfaction of the Trial Court/Duty MM, on the following conditions:

- a. The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever; b. The Applicant shall under no circumstance leave the country without the permission of the Trial Court;
- c. The Applicant shall appear before the Trial Court as and when directed;
- d. The Applicant shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;
- e. The Applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times;

See also: Rabi Prakash v. State of Odisha, 2023 SCC OnLine SC 1109 This is a digitally signed order.

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22. In the event of there being any FIR/DD entry / complaint lodged against the Applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

23. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

24. The bail application is allowed in the afore-mentioned terms.

SANJEEV NARULA, J MARCH 17, 2025 d.negi 2025 INSC 30.

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