

Solomon Ogbe vs Narcotics Control Bureau on 30 May, 2025

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 19th May, 202

Pronounced on: 30th May, 2

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BAIL APPLN. 4263/2024

SOLOMON OGBE

Through:

Mr. Manesh Bhardwaj a

Fahad Siddiqui, Advs.

versus

NARCOTICS CONTROL BUREAU

.....Respondent

Through: Ms. Shelly Dixit and Ms. Tracy

Sebastian, Advs.

CORAM:

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

RAVINDER DUDEJA, J.

1. The present application has been filed by the applicant seeking regular bail in Crime No.VIII/63/DZU/2020 registered under Sections 8/21/23/29 NDPS Act at P.S. Narcotics Control Bureau, Delhi.

2. As per the status report submitted by the NCB/respondent, on 13.11.2020, under a controlled delivery operation directed by the DG, NCB, a parcel bearing AWB No. 4645737751 was collected by IO Kapil from the captain of Gulf Airways and deposited in the NCB office. On 22.12.2020, acting on reliable information, a team led by the IO reached the address L-85, Street No. 7, New Mahavir Nagar, where one Naresh Chopra accepted the parcel and disclosed that it was intended for the applicant Solomon, a foreign national residing nearby. Naresh, who claimed to know Solomon for 5-6 years, then delivered the parcel to Solomon at his residence in Gali No. 16, which was subsequently raided by the NCB team. The parcel was found intact and contained 12 white boxes marked "city lights" concealing a powdery substance which tested positive for heroin.

3. As the contents of all 12 boxes appeared similar, they were mixed into a single polythene bag, weighed (364 grams), and marked as Exhibit A. Further search of the applicant's residence led to the recovery of 242 grams and 32 grams of heroin from different polythene bags, along with other items like ziplock pouches, a laptop, and mobile phones. The applicant was arrested on 23.12.2020 under Sections 21 and 23 of the NDPS Act, produced before the Duty Magistrate on 24.12.2020, and sent to judicial custody on 26.12.2020. After investigation, a complaint was filed on 19.06.2021, and charges under Sections 21(c) and 23(c) NDPS Act were framed on 22.11.2021 by the learned Special Judge, NDPS, Patiala House Courts, New Delhi.

4. Learned counsel for the applicant submits that the applicant has been in judicial custody since 23.12.2020, amounting to more than 4 years and 5 months of incarceration without the conclusion of trial. It is argued that this prolonged pre-trial detention violates the applicant's fundamental rights under Article 21 of the Constitution of India. The prosecution has cited 10 witnesses, of whom only two have been examined so far. As on 24.04.2025, the cross-examination of PW-2 was ongoing, demonstrating that the trial is proceeding at a very slow pace and is unlikely to conclude in the near future. No relief by way of interim bail has been sought by the applicant during this period. Reliance is placed on *Union of India v. K.A. Najeed* (2021) 3 SCC 713, *Jitendra Jain v. NCB* 2022 SCC OnLine SC 2021, *Rabi Prakash v. State of Odisha* 2023 SCC OnLine SC 1109, and *Dheeraj Kumar Shuklav. State of U.P.Criminal Misc. Bail Application No. - 45253 of 2021*, to argue that conditional liberty must override the statutory embargo under Section 37(1)(b)(ii) of the NDPS Act in the face of prolonged incarceration and slow trial.

5. It is further submitted that the recovery in question is not from the exclusive possession of the applicant. The contraband is shown to have been recovered from a parcel addressed to one Naresh Chopra, who was also residing in the same apartment. The parcel bore the name of Naresh Chopra as consignee, though the address mentioned was that of the applicant. It is further contended that 12 packets were recovered from the said parcel, and instead of testing each packet individually, the officials mixed the contents of all 12 packets into one polythene bag, homogenized the mixture, and then drew the sample. This procedure is in violation of Standing Order 1/88, which prohibits mixing contents from multiple packets prior to sampling.

6. It has been submitted that it is possible that only one of the 12 packets allegedly contained contraband, and mixing of all the packets has rendered it impossible to determine which packet contained the contraband. This irregularity undermines the prosecution's case and causes serious prejudice to the applicant. It is further submitted that faulty sampling procedure renders the prosecution evidence unreliable.

7. Learned counsel for the respondent/NCB has opposed the grant of bail submitting that the total recovery in the present case amounts to a commercial quantity, as 360 grams of heroin were recovered from a parcel addressed to the applicant's residence. It was further submitted that as per the rent agreement, the applicant was the tenant of the premises from where the contraband was seized. In addition to the recovery from the parcel, another recovery of heroin measuring 242 grams and 32 grams respectively was made from the said residence, thereby establishing two separate recoveries, one from the parcel containing 12 packets and another directly from the house. Learned counsel for the respondent relies on *Kashif v. NCB Bail Appl. 253/2023* decided 01.05.2023, submitting that the mixing of recovered contraband does not vitiate the trial and does not constitute a procedural irregularity. It has also been submitted that the applicant is a foreign national without a valid passport or visa and is therefore a flight risk.

8. Court has given thoughtful consideration to the rival submissions made on behalf of the parties and has perused records/documents as well as the relevant precedents placed on record.

9. At the outset, it is not in dispute that the applicant has been in judicial custody since 23.12.2020 and has undergone more than four years and five months of incarceration. The record further reveals that out of ten witnesses cited by the prosecution, only two have been examined so far, and even the cross-examination of PW-2 was still pending on 24.04.2025.

10. The Supreme Court in *Union of India v. K.A. Najeed*, (supra), while dealing with the provisions of the UAPA, which also contains stringent bail provisions akin to Section 37 of the NDPS Act, has held that constitutional courts are empowered to grant bail where there is undue delay in the trial and continued incarceration infringes the fundamental right under Article 21. A similar view has been reiterated in *Jitendra Jain v. Union of India*, (supra), *Rabi Prakash v. State of Odisha*, (supra).

11. In light of these binding precedents, this Court is of the considered view that continued incarceration for an indefinite period, with no clear prospect of early conclusion of trial, would result in grave prejudice to the applicant. The constitutional right to speedy trial cannot be rendered theoretical merely due to the rigours of Section 37 of the NDPS Act.

12. Coming to the allegations, it is the prosecution's case that two recoveries were effected, one from a parcel containing 12 packets (360 grams of heroin), and another from the residential premises (242 grams and 32 grams). The residence is admittedly rented in the name of the applicant. However, the parcel was addressed to one Naresh Chopra, who, as per the applicant, was also residing in the same apartment. The parcel also bore Naresh Chopra's name as consignee. These facts indicate that exclusive possession and conscious knowledge of the contraband, especially in relation to the parcel, may be a matter requiring evidence during trial.

13. Significantly, it has been argued that the contents of all 12 packets were mixed before sampling, in violation of the procedural safeguards under Standing Order 1/88 dated 13.06.1989, which are extracted as under:-

"2.4 In the case of Seizure of a single package/container, one sample (in duplicate) shall be drawn. Normally, it is advisable to draw one sample (in duplicate) from each packet/container in case of seizure of more than one package/container."

14. Court notes that the process of mixing multiple packets before drawing samples has been disapproved by various judicial pronouncements, including *Laxman Thakur v. State (Govt. of NCT of Delhi)*, Bail Appl. 3233/2022 as well as in *Union of India v. Bal Mukund & Ors.* (2009) 12 SCC 161. Such procedural lapses, if established, may vitiate the reliability of the forensic evidence and cause prejudice to the accused. However, Court refrains from making any conclusive observations at this stage, as these are matters to be tested during the trial. In the *Laxman Thakur* (supra) it was inter alia held as under;

"7. The judgment of Sumit Tomar (supra) has been duly considered by the Coordinate Bench of this Court titled in a judgment titled as '*Santini Simone v. Department of Customs*' [2020 SCC OnLine Del 2128] and relevant paras read as under:

".....

59. In *Basant Rai* (supra), a Coordinate Bench of this Court considered a case where the accused was allegedly found carrying a polythene bag, containing eight smaller polythene bags, containing a brown colour substance, which was alleged to be charas. The Investigating Officer had taken small pieces from each packet and mixed the same and thereafter, drawn two samples which were sent to FSL for analysis. The Court found fault with the said procedure and allowed the appeal. The Court held as under:

"25. After hearing both the learned counsel for parties and going through the Trial Court Record, I find force in the submission of learned counsel for appellant. Admittedly, the samples were drawn after breaking small pieces from 08 of the polythene bags which were allegedly kept in a green coloured bag by the appellant in his right hand. The IO prepared two samples of 25 grams each after taking a small quantity from each of the slabs.

26. Though the settled law is that if it is not practicable to send the entire quantity then sufficient quantity by way of samples from each of the packets of pieces recovered should be sent for chemical examination. Otherwise, result thereon, may be doubted.

27. For example, if the 08 packets were allegedly recovered from the appellant and only two packets were having contraband substance and rest 6 packets did not have any contraband; though all maybe of the same colour, when we mix the substances of all 8 packets into one or two; then definitely, the result would be of the total quantity and not of the two pieces. Therefore, the process adopted by the prosecution creates suspicion. In such a situation, as per settled law, the benefit thereof should go in favour of the accused. It does not matter the quantity. Proper procedure has to be followed, without that the results would be negative."

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8. I am of the view that as mandated by the Hon'ble Supreme Court in judgment of '*Union of India v. Bal Mukund*' [(2009) 12 SCC 161], standing order 1/88 has been opined to be a "requirement of law."

15. The applicant/petitioner is a foreign national, which raises concerns regarding flight risk. However, such risk can be mitigated through appropriate conditions such as surrendering travel documents, providing a local surety, and ensuring regular appearances before the trial court as and when required.

16. In view of the above facts and circumstances, this Court is of the opinion that the applicant has made out a case for grant of bail on the ground of prolonged incarceration, which in the present case

overrides the statutory embargo under Section 37(1)(b)(ii) of the NDPS Act. This principle was upheld in *Mohd. Muslim v. State (NCT of Delhi)*, SLP (Crl.) 5530/2022, where the Supreme Court held that in cases of prolonged pre-trial detention, conditional liberty would prevail over the statutory prohibition under Section 37 of the NDPS Act. Accordingly, the present bail application is allowed. The applicant be released on bail on the following terms:

(i) The applicant shall furnish a personal bond in the sum of 50,000/- with a surety of the like amount, to the satisfaction of the learned Trial Court.

(ii) The applicant shall provide his mobile number to the IO concerned which shall be kept in working condition at all times.

(iii) The applicant shall report to the local police station on the first Thursday of every month.

(iv) In case, the applicant changes his address, he will inform the IO concerned and this Court as well.

(v) The applicant shall not leave the country during the bail period and surrender his passport before the trial court;

(vi) The applicant shall not indulge in any criminal activity during the bail period.

(vii) The applicant shall not communicate with, or come into contact with any of the prosecution witnesses.

17. A copy of this order be sent to the Jail Superintendent for information and necessary compliance.

18. The bail application is accordingly disposed of.

RAVINDER DUDEJA, J.

MAY 30, 2025/ NA