

(2025) 10 DEL CK 1269

In the Delhi High Court

Case No : Bail Application No. 1210 Of 2025

Kenechukwu Okafor

APPELLANT

Vs

State Of Nct Of Delhi

RESPONDENT

Date of Decision : 14-10-2025

Acts Referred:

Bharatiya Nagarik Suraksha Sanhita, 2023 — Section 528
Code of Criminal Procedure, 1973 — Section 439, 482
Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 21, 21(c), 37, 42, 50, 52A, 52(2)(A)
Foreigners Act, 1946 — Section 14, 14(a), 14(b)

Citation : (2025) 10 DEL CK 1269

Hon'ble Judges : Neena Bansal Krishna, J

Bench : Single Bench

Advocate : Kirti Chauhan, Vikas Sharma, Harsh Sharma, Deepanshu, Goswami, Rohit Sehrawat, Ajay Vikram Singh

Final Decision : Dismissed

Judgement

Neena Bansal Krishna, J

1. Bail Application under Section 528 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023/Section 439 read with Section 482 of the Code of Criminal Procedure (Cr.P.C), 1973 has been filed on behalf of the Applicant, Kenechukwu Okafor, seeking Regular Bail in relation to FIR No. 161/2022 under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "NDPS Act") and Section 14 of the Foreigners Act, 1946, dated 14.10.2022 registered at P.S. Bindapur.

2. As per the case of the Prosecution, on 25.02.2022 at about 06:05 PM, on the basis of the Secret Information, Kenechukwu Okafor (the Applicant herein) was apprehended near Najafgarh Road at around 07:30 PM – 07:40 PM with a large number of Drugs, and 300 gm of Heroin was recovered from his person. He was arrested on 25.02.2022 and was remanded to Judicial Custody thereafter.

3. The FIR was registered on 25.02.2022. After investigation, the Chargesheet was submitted in the Court, on 06.04.2023.

4. The Applicant herein moved a regular Bail Application under Section 439 Cr.P.C. before the Ld. Trial Court, but it was dismissed vide Order dated 04.03.2025.

5. The Applicant has filed the present Application seeking Regular Bail on the grounds that he has been falsely implicated by the Police Officials of PS Bindapur, without any basis. Despite their efforts, the officials were not able to locate the real culprit, leading them to accuse the Applicant without sufficient evidence.

6. It is submitted that during the raid, HC Dinesh informed the Applicant of his legal rights and served a Notice under Section 50 NDPS Act. The Search and Seizure Memo was prepared in the presence of ACP Vijay Singh Yadav, who arrived at the scene at 9:10 PM. However, ACP Yadav had previously authorized the raid vide DD No. 08, raising concerns about his involvement in both authorizing the raid and overseeing the search. This dual role compromises the independence and impartiality required under Section 50 NDPS Act.

7. Reliance is placed on the case of Jeffery Robert vs. State of NCT of Delhi, Bail Appl. 509/2024, dated 22.04.2024, where a Co-ordinate bench of this Court held that the Police Officer who empowered raiding team to conduct raid, cannot be termed as "Independent Gazetted Officer u/s 50 NDPS Act". It was held that there is a non-compliance of Section 50 NDPS Act, in as much as the search of the Petitioner not in the presence of an independent Gazetted Officer. This by itself is sufficient ground to record satisfaction that the Petitioner is not guilty of the offence charged.

8. Reliance is also placed on the case of Mohd. Jabir vs. State of NCT of Delhi, (2023) SCC Online Del 1827, where the Apex Court observed, "The ACP was the part of the raiding team and it was on his direction the entire investigation was initiated, could not be called an independent officer. He was after all the Gazette Officer who had proceeded to the place of occurrence after entertaining reasonable belief that the accused persons may be carrying narcotic substances and hence cannot be said to be an independent person before whom the law contemplates a search under NDPS."

9. It is submitted that the Police received confidential information about the alleged incident at approximately 6:05 PM, giving them ample time to secure independent witnesses to ensure the search's integrity. However, they failed to do so, casting doubt on the legality and validity of the search process.

10. It is further submitted that during the search, a white polythene packet containing narcotics was found in the Applicant's lower right pocket and sealed in a transparent box by the I.O. As per legal procedure, proper sampling, sealing, and documentation were required to be done to ensure the integrity of the seized material and prevent tampering before its presentation in Court.

11. Furthermore, when the sealed box was presented to the Ld. MM under Section 52A NDPS Act for certifying the seized narcotics and drawing samples, a discrepancy was found. The I.O. opened the seal, revealing a transparent polythene bag, whereas a white polythene packet was originally seized.

12. It is submitted that after the Judicial Custody of more than 3 years, only 3 out of 17 Prosecution witnesses have been examined by the Prosecution. Moreover, following the Hon'ble High Court of Delhi's Order on 21.10.2024 in Bail Application No. 3382/2024, directing the Trial Court to expedite proceedings, only three witnesses were examined in about six months. Thus, it is unlikely the Trial will conclude soon, resulting in continued detention of the Applicant.

13. Reliance is placed on the case of Dheeraj Kumar Shukla vs. State of Uttar Pradesh, (Crl.) No(s). 6690/2022 wherein it was observed, " ... while the quantity recovered from the Petitioner is commercial in nature and ordinarily would attract the provisions of Section 37 of the NDPS Act, the absence of criminal antecedents and the fact that the Petitioner has been in custody for the last two and a half years warrant dispensing with the conditions of Section 37, especially since the trial has yet to commence despite Charges being framed."

14. It is submitted that the object of Bail is to secure the accused person's appearance at the Trial. The object of Bail is neither punitive nor preventive. Reliance has been placed on the case of Sanjay Chandra vs. Central Bureau of Investigation, (2012) 1 SCC 49.

15. Lastly, it is submitted that the Applicant undertakes that he will not, directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case; and undertakes to present himself before the police/court as and when directed.

16. Thus, the prayer is made seeking Regular Bail.

17. The Status Report has been filed on behalf of the Respondent/State detailing the facts of the case.

18. On 25.02.2022, the Anti-Narcotics Cell, Dwarka received a tip that Kenechukwu Okafor would be supplying Heroin near Metro Pillar No. 763, Najafgarh Road, New Delhi, around 7:30–7:40 PM. The information was verified and the raiding team was authorized to conduct the search and seizure under Section 42 NDPS Act.

19. At around 07:18 PM, the raiding team reached near Metro Pillar No. 763, Samadhi Sthal Wall, Najafgarh Road, New Delhi. Thereafter, at around 07:35 PM one African person arrived from Sewak Park side and started waiting for someone. The informer had indicated towards African citizen and confirmed that he is the person who has come to deliver the Heroin drugs.

20. On interrogation name and address of apprehended person was revealed as Kenechukwu Okafor s/o Okafor Vitus r/o H.No. 19, Onumunau Street, Thiala,

Anambra, Nigeria Age-23 years.

21. Notice under Section 50 NDPS Act was given to Applicant and he was informed about his legal rights. Thereafter, ACP Vijay Singh Yadav arrived at place of incident and search of Applicant was conducted by HC Dinesh. During search of the Applicant, one white polyethene tied with knot was recovered from right pocket of lower worn by the accused. On opening the polyethene, white and cream colour substance was found. The recovered substance was checked by "field testing kit" and it was confirmed as Heroin Drug, weighing 300 grams. The recovered polyethene was again tied with the knot and kept in a transparent plastic container, wrapped with the help of Dr tape and sealed with the seal of "SC".

22. FIR No.161/2022 dated 25.02.2022 under Section 21 NDPS Act, P.S. Bindapur was registered and the Applicant was arrested on the same day.

23. The personal search of accused was conducted and Notice under Section 50 NDPS Act alongwith Rs. 540/- were recovered from his personal search. One mobile phone keypad Make-Nokia was seized as case property.

24. The Applicant was granted two days Police Custody and efforts were made to trace the supplier of the recovered narcotics substance. On 26.02.2022, the Application for proceedings under Section 52(2)(A) NDPS Act was submitted before the court and sampling was conducted.

25. As per Report of Assistant Director, IB, Ministry of Home Affairs the, accused's details about arrival/departure in India could not be provided and Section 14 A Foreigners Act was added in the present case.

26. The Chargesheet was submitted on 22.08.2022. Charge under Section 21(c) NDPS Act and 14(a)/14(b) Foreigners Act was framed by Trial Court on 06.02.2024.

27. Total 17 witnesses were cited as Prosecution Witness and out of them 04 Prosecution Witnesses have been examined till date. FSL result was received and result of Report was "On chemical, TLC & GC-MS examination, exhibit ?S-1? was found to contain, Diacetylmorphine Caffeine Acetaminophen : Codeine Acetylcodeine & Monoacetylmorphine". The FSL result has been filed in the Court with Supplementary Chargesheet, on 28.04.2023.

28. As per the SCRB report, the Applicant is not previously involved in any criminal case.

29. To substantiate their contentions about non-joining of independent witnesses, the Respondent/State has placed reliance on the case of Ram Swaroop vs. State (Govt. of NCT of Delhi), (2013) 14 SCC 235, wherein the Apex Court had held that there is no mandatory rule that non-examination of independent witnesses would vitiate the trial and their absence by itself does not discredit the Prosecution.

30. It is further submitted that in the case of *Rizwan Khan v. State of Chhattisgarh*, (2020) 9 SCC 627, the Apex Court reiterated that the testimony of official witnesses cannot be discarded merely for want of independent corroboration and that non-examination of public witnesses is not necessarily fatal to the Prosecution.

31. Reliance is also placed on the case of *Jagwinder Singh vs. State of Punjab*, 2023SCC Online SC 1389, it was categorically observed that "law does not require only an independent witness to prove a charge under the NDPS Act" and that recovery proved through competent and reliable official witnesses is sufficient.

32. Thus, the settled legal position is that the Prosecution case cannot be thrown out solely on the ground of non-association of public witnesses, so long as the official witnesses inspire confidence and the statutory safeguards have been duly complied with.

33. Thus, the Bail Application is strongly opposed and liable to be dismissed.

34. Submissions heard and record perused.

35. It is the case of the Prosecution that the Applicant, a foreign national, was apprehended on the basis of secret information and a recovery of 300 grams of heroin was affected, which falls under the category of commercial quantity.

36. Section 37 of the NDPS Act lays down the twin conditions to be satisfied at the time of consideration of Bail. The Court has to be satisfied that there are reasonable grounds for believing that the accused is not guilty of the offence and that he is not likely to commit any offence while on Bail.

37. 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 vs. 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.”

38. Based on the material on record, there is no basis to form a belief, even on a preliminary basis, that the Applicant is “not guilty.” The Applicant was apprehended and a recovery of commercial quantity of 300 grams of Heroin has been made from his person (the right pocket of the lower the Applicant was wearing), and therefore, it cannot be said that prima facie there is nothing to show that he has not committed the crime, is completely untenable.

39. Another contention raised on behalf of the Applicant is that, at the time of seizure, it was a white-coloured polythene packet which was seized, but during the sample-drawing process under Section 52A NDPS Act before the Ld. Magistrate, a transparent polythene bag was produced. The Applicant, therefore, apprehends that the recovered contraband may have been tampered with.

40. It cannot be ignored that at the stage of considering an Application for Bail, this Court cannot enter into a meticulous examination of the evidence as observed by the Apex Court in *Union of India vs. Rattan Malik*, (2009) 2 SCC 624. Whether there were two bags or whether it was a white or a transparent bag - all is a matter of trial, which at this stage does not falsify the Prosecution’s case so as to entitle the Applicant to Bail. Therefore, this ground is untenable. Furthermore, it cannot be overlooked that whether the procedural compliances were strictly adhered to is a matter of trial, which at this stage does not falsify the case of the Prosecution or entitle the Applicant to Bail.

41. The Apex Court in *Narcotics Control Bureau vs. Kashif*, (2024) 11 SCC 372, has observed as under:

50.5. Any procedural irregularity or illegality found to have been committed in conducting the search and seizure during the course of investigation or thereafter, would by itself not make the entire evidence collected during the course of investigation, inadmissible. The court would have to consider all the circumstances and find out whether any serious prejudice has been caused to the accused.

42. Similarly, the Apex Court in *State of Karnataka vs. Sri Darshan*, 2025 SCC OnLine SC 1923, has held that a procedural lapse by itself, does not justify the grant of Bail in cases involving serious offences.

43. The next contention raised is that the Applicant has been in Judicial Custody since 25.02.2022 and the Trial is likely to take long, entitling the Applicant to Bail. While it is established from various judgments that delay in conclusion of trial is one of the grounds for Bail, here is a case where 300 grams of Commercial quantity of Heroin was recovered from the Applicant, which is crucial to consider.

44. The three Judge Bench of the Apex Court in *Narcotics Control Bureau vs.*

Mohit Aggarwal, (2022) 18 SCC 374, has observed that the length of the period of his custody or the fact that the Chargesheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the Respondent under Section 37 NDPS Act.

45. Similarly, in Gurwinder Singh vs. State of Punjab, (2024) 5 SCC 403, the Apex Court has observed that mere delay in Trial in grave offences, cannot be used as a ground to grant Bail.

46. In Gobarbhai Naranbhai Singala vs. State of Gujarat, (2008) 3 SCC 775, the Apex Court while relying upon State of U.P. vs. Amarmani Tripathi, (2005) 8 SCC 21 has observed that long period of incarceration cannot itself be the ground for grant of Bail.

47. The Applicant is a foreign national from Nigeria with no discernible ties in India. The possibility of his absconding 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.

48. Furthermore, the fact that Charges have already been framed and 3 out of 17 witnesses have been examined, it cannot be said that there is any inordinate delay in the trial. Rather, the trial is proceeding at its own pace.

Conclusion:-

49. 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 NDPS Act, and the grave risk of the Applicant, absconding if released on Bail, no case is made out for grant of Bail.

50. The Bail Application is, therefore, dismissed. Pending Applications are disposed of accordingly.