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

+ **BAIL APPLN. 914/2025**

QUENTIN DECON

.....Petitioner

Through: Mr. Akshay Bhandari, Mr. Anmol Sachdeva, Mr. Janak, Mr. Kushal Kumar and Ms. Megha, Advocates.

versus

CUSTOMS

.....Respondent

Through: Mr. Puneett Singhal, SPP.

CORAM:

HON'BLE MR. JUSTICE ARUN MONGA

ORDER

25.09.2025

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1. The applicant, a foreigner national, is under incarceration since 27.06.2021 (4 years and 3 months). He seeks indulgence of this Court for grant of regular bail during pendency of the trial in the criminal proceedings arising out of File No. VIII(AP)10/P&I/3208-D/ARRIVAL/2021 for the offences punishable under Sections 8, 21, 23, and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act), registered at Police Station Customs.
2. Applicant's earlier bail application was dismissed as withdrawn by the learned Special Judge (NDPS) *vide* order dated 08.12.2022.
3. Briefly speaking, per prosecution, on 27.06.2021, the Officers of Customs, IGI Airport, New Delhi intercepted two of the accused persons namely Sydney John-Brain O' Grady and Quentin Deacon (applicant



herein), both having passports of Republic of South Africa. They had arrived from Doha to Delhi. Sydney John-Brain O' Grady was carrying one black colour checked-in trolley bag, and one black color backpack as cabin bag. Quentin Deacon/the applicant was also carrying one beige checked-in trolley bag, and one black color backpack as cabin bag.

3.1 That both the accused persons were asked; whether they were carrying any dutiable or contraband or prohibited goods, to which they replied in negative. To examine the truthfulness of their statement, they were asked to get their baggages scanned through X-Ray Baggage Inspection Machine. During X-ray, some suspicious images were noticed in their checked-in baggage. During Door Frame Metal Detector (DFMD) examination of both the accused persons no beep sound was heard, which mean that they did not conceal any metallic contraband goods in their clothes or inside their body cavities. Thereafter, both the accused persons, along with their baggage, were taken to the Customs Preventive Room for further verification.

3.2 That at this stage, two independent witness / panchas, were called to witness the search and further proceedings. The Customs officer again asked both the accused persons, whether they were carrying any contraband items like drugs etc., to which they replied in negative. Thereafter, a Notice under Section 50 of the NDPS Act, 1985 and a Notice under Section 102 of the Customs Act, 1962 were served upon both the accused persons by the Customs Officer, wherein they were informed, about the requirement of their personal and baggage search and was apprised of their legal rights that their personal search and search of their baggages could be conducted in the presence of a magistrate or a Gazetted Officer of Customs, to which both the



accused persons gave their consent in writing on the body of both the Notices itself that their personal and baggage search could be conducted by the Customs Officer.

3.3 Thereafter, the personal & Baggage search of both the accused persons were conducted by Customs Officer. During personal search of both the accused persons, nothing objectionable was found.

3.4 That while searching the checked-in trolley bag carried by the co-accused, it was found that the bag contained 8 packets of black coloured plastic coffee bags of black gold mark. It was further noticed that some Off-white coloured powdery substance/granules totally weighing 8000 grams (approx.) was kept inside 08 unmarked white cloth packets placed inside transparent plastic poly-bags.

3.5 That thereafter, the total material recovered from the co-accused i.e. the Off-White coloured powder/granules suspected to be narcotics substance weighing 8000 grams approx. was further kept in a transparent poly bag weighing 27 grams approx. which was further kept in a plastic container weighing 480 grams approx., thus totally weighing 8500 grams approximately.

3.6 Further, while searching the beige colour checked-in trolley carried by the applicant, it was found that the bag contained 5 nos. of paper boxes of BOKOMO WEET-BIX wholegrain wheat Biscuits. It was further noticed that some Off-white coloured powdery substance/granules totally weighing 10000 grams (approx.) were kept inside 10 transparent plastic packets each placed inside white coloured cloth packet having circular stamp in blue colour marked with 'BLUE SAPHIRE 555 & 999 inside the circular stamp further placed inside one or two (in few cases) outer transparent plastic



packet(s). Two such outer transparent plastic packets were further placed inside brown taped plastic packet 04 such brown taped plastic packets were placed inside 04 paper boxes of BOKOMO WEET-BIX: wholegrain Biscuits. 02 brown taped plastic packets each containing one above mentioned outer transparent plastic packet were placed inside 01 paper box of BOKOMO WEET-BIX wholegrain wheat Biscuits.

3.7 The total material recovered from the applicant i.e. Off-White coloured powder/granules suspected to be narcotics substance Weighing 10000 grams approx. was further kept in a transparent poly bag weighing 27 grams approx. which was further kept in a plastic container weighing 480 grams approx., thus totally weighing 10500 grams approximately.

3.8 That the representative samples of the recovered off-white coloured powder/granules recovered from each of the accused persons, suspected to be narcotics Substance were tested with the help of Modified Narcotic Drugs Detection Kit which tested positive as “Heroin”.

3.9 The above recovered narcotic substance found to be “Heroin” was seized and deposited at non-valuable godown. Both the accused persons were put under arrest vide respective arrest memo dated 27.06.2021.

4. In the aforesaid backdrop, I have heard the rival contentions and perused the case file.

5. Learned counsel for the applicant would argue inter alia on the lines of grounds as pleaded in the petition as below:-

5.1 That PW-3 (Inspector Intelligence, DGGI) has been examined and cross examined after the dismissal of the previous bail application and in view his testimony, the applicant is now entitled for bail is the contention.

5.2 That in the case of **Lok Pal Singh V s The State Of Uttarakhand**



(*SLP Crl. No. 57112014*), the Hon'ble Supreme Court observed that samples need to be drawn from each of the pieces and sent to FSL, failing which it cannot be said that the accused was found in possession of commercial quantity.

5.3 That it is the admitted case of the prosecution that there is no evidence to support that the FSL result pertains to commercial quantity of contraband as the IO has admitted that he cannot state the weight of the packet to which the FSL result pertains nor can he state the weight of the individual packets as it was never taken.

5.4 That further, he admits that the panchnama does not state that substance was taken from each packet to be tested on the field testing kit. That the law is settled that if 2 persons are found together and contraband is separately recovered from them, they are liable for their individual recoveries and not the recovery from the co-accused.

5.5 That the law is settled that there can be no distinction for grant of bail between Indian Nationals and foreign nationals, However, conditions that are imposed can be different.

5.6 That the law has been settled by the Hon'ble Supreme Court in case of ***Satyendra Kumar Antil vs CBI (SLP Crl. No. 5191/2021)***, that delay in trial is a ground for bail and Section 37 NDPS would not come in the way if there is delay in trial.

5.7 Further in the cases of ***Dheeraj Kumar Shukla Vs The State of Uttar Pradesh (SLP Crl. 6690-2022)***, bail was granted to the accused on the ground that he has been in custody for over two and a half years and trial is not likely to be completed.

5.8 That in the matter of ***Puneet Gupta vs Ncb (Delhi Zonal Unit) in***



BAIL APPLN. 1727/2024, this Hon'ble Court was pleased to observe as under:- "4. Learned counsel for the applicant has further placed reliance on the decisions in *Tinku Tagadgiri v. State of Odisha* passed in SLP (Crl) 12844/2023, *Jitendra Jain v. Narcotics Control Bureau* reported as 2022 SCC OnLine SC 2021 and *Rabi Prakash v. State of Odisha* reported as 2023 SCC OnLine SC 1109 to submit that even in cases of commercial quantity, considering the length of incarceration and the fact that the trial is yet to begin or that the same would take a long time, accused persons have been granted the benefit of bail.

5.9 In ***Jitendra Jain v. Narcotics Control Bureau reported as 2022 SCC Online SC 2021***, while considering a case where the accused had undergone custody of more than two years, the Supreme Court observed as: "Though it is a case of commercial quantity and allegations levelled against the petitioner are serious in nature, but having regard to the fact that he is in custody for 2 years and conclusion of trial will take time, we are inclined to release the petitioner on bail."

5.10 More recently in ***Man Mandal and Anr. v. State of West Bengal reported as 2023 SCC Online SC 1868***, while taking into account continued custody of more than two years, the accused was granted bail.

5.11 Learned counsel for the applicant also relies on ***Javed Gulam Nabi Shaikh versus State of Maharashtra and Another***, Criminal Appeal No. 2787/2024, wherein it is held as below:-

"7. Having heard the learned counsel appearing for the parties and having gone through the materials on record, we are inclined to exercise our discretion in favour of the appellant herein keeping in mind the following aspects:

(i) The appellant is in jail as an under-trial prisoner past



four years;

(ii) Till this date, the trial court has not been able to' even proceed to frame charge; and

(iii) As pointed out by the counsel appearing for the State as well as NIA, the prosecution intends to examine not less than eighty witnesses.

8. Having regard to the aforesaid, we wonder by what period of time, the trial will ultimately conclude. Howsoever serious a crime may be, an accused has a right to speedy trial as enshrined under the Constitution of India.

9. Over a period of time, the trial courts and the High Courts have forgotten a very well settled principle of law that bail is not to be withheld as a punishment.

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18. Criminals are not born out but made. The human potential in everyone is good and so, never write off any criminal as beyond redemption. This humanist fundamental is often missed when dealing with delinquents, juvenile and adult. Indeed, every saint has a past and every sinner a future. When a crime is committed, a variety of factors is responsible for making the offender commit the crime. Those factors may be social and economic, may be, the result of value erosion or parental neglect; may be, because of the stress of circumstances, or the manifestation of temptations in a milieu of affluence contrasted with indigence or other privations.

19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.

20. We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever



stringent the penal law may be.

21. We are convinced that the manner in which the prosecuting agency as well as the Court have proceeded, the right of the accused to have a speedy trial could be said to have been infringed thereby violating Article 21 of the Constitution.

...

5.12 That the applicant has already undergone more than 4 years in custody and charge-sheet was filed on 23.12.2021 and till date only 6 witnesses have been examined out of a total of 14 witnesses. Therefore, the trial is likely to take substantial time.

5.13 That considering the delay in trial and long incarceration of more than 4 years the embargo under Section 37 of the NDPS Act, in view of the aforesaid judgments passed by the Hon'ble Supreme Court, will not be applicable in the facts and circumstances of the present case.

6. Learned SPP for the respondent/ Customs would oppose the bail plea arguing that the applicant possessed commercial quantity of heroin under the NDPS Act, attracting an absolute bar on bail under Section 37(1)(b)(ii). Moreover, the accused/applicant, being a foreign national, poses a serious flight risk. Judicial precedents emphasize societal interest in denying bail to drug traffickers. The trial is ongoing with no unreasonable delay, and releasing the accused could compromise evidence and witnesses.

6.1 Learned SPP relies on a judgment rendered by a Co-ordinate Bench in ***Umar Sebandeke v. Customs***, BAIL APPLN. 3460/2023, *vide* which bail of similarly situated accused was dismissed *vide* order dated 15.07.2024, wherein the learned Single Judge observed as under:-

“... ”

42. In the present case, the charges have been framed against the applicant for the offences under Sections 29, 21



and 23 of the NDPS Act, which are punishable with a minimum punishment of 10 years and a minimum fine of ₹1,00,000/-. Admittedly, the applicant has spent almost three and a half years in custody, however, he has not undergone a minimum of five years of incarceration in the present case to be entitled to bail solely on the ground of delay in trial. It does not seem entirely implausible at this stage that the trial will not conclude within the next one and a half years.

43. However, considering that the case is pending since the year 2021, this Court considers it apposite to request the learned Trial Court to expedite the trial.

44. In such circumstances, this Court is of the opinion that the applicant has not made out a prima facie case for grant of bail.

...”

7. Having heard, I am of the view that there may be some substance in some of the arguments on merits addressed by the learned counsel for the applicant but the same is matter of trial. However, I am of the view that at this stage, in light thereof, it is a case for bail. Let us see how.

8. Some doubt is casted on the probability of conviction of the applicant/accused herein in light of the testimony (Annexure-‘D’) of the Investigating Officer wherein he has stated as under:-

“...”

It is correct that when the substance was taken out before the Ld. MM for sampling, the contents of all 10 packets recovered from the accused Quieten had already been mixed up at the time of seizure and therefore, I was not in a position to tell as to from which packet which, substance was recovered. It is correct that since the substance were mixed up already, I cannot say as to which packet the



samples sent to CRCL pertained to. It is also correct that I cannot tell individual weight of the packet to which the sample sent to CRCL pertained to.

...”

9. The aforesaid testimony has to be read in light of the Supreme Court’s observations in **Lok Pal Singh (Supra)**, wherein it is observed as below:-

“We are of the view that while undertaking the exercise of extracting samples, the pieces ought to have been preserved in a uniform manner and sample ought to have been taken out from each of them. However, the procedure adopted by the respondent, despite being improper, would not enable the appellant to take advantage of the same as the samples clearly show the presence of contraband. It is one thing to say that the quantity is not commercial, as against no existence of the clear presence of contraband. In such circumstances of the matter, we are inclined to modify the sentence to the period undergone, by treating the contraband as less than commercial quantity. Accordingly, the appeal stands allowed by setting aside the conviction for commercial quantity and reducing the sentence to the period undergone.”

10. Concededly, the procedure, as envisaged aforesaid, has not been followed in the present case as testimony *ibid*. The prosecution witness admitted during cross-examination that the seized substance had been mixed before sampling, making it impossible to identify which packet the samples sent for testing came from or their individual weights. There is thus doubt on the proof the tested samples which were represented as a commercial quantity on the whole. Each packet was to be individually tested.

11. Moreover, the order of this Court in **Umar Sebandeke (supra)** relied



upon by the Responent/Customs is prior to the order in **Lok Pal Singh (Supra)** passed by the Supreme Court which has been relied upon by learned counsel for the applicant.

12. Investigation is over qua the applicant as the charge sheet has been filed. He is thus not required for any custodial investigation. The testimony of prosecution witnesses is being recorded. As far as tampering of the evidence is concerned, the same seems to be an unfounded suspicion since most of the evidence is documentary in nature, which has already been seized by the prosecution and is beyond the reach of the applicant. As regards influencing the witnesses, they are all officials of the prosecution and thus, it is an unfounded suspicion that he may try to reach out.

13. Not only the applicant has undergone inordinate incarceration since 27.06.2021 (4 years and 3 months) but even otherwise, given the snail's pace of the proceedings in the learned Trial Court, it may so happen that before the same concludes, the applicant may end up undergoing the entire sentence without being held guilty.

14. Be that as it may, trite as it may sound, until proved guilty the presumption is of the innocence, and therefore, giving benefit of the same, coupled with the other reasons stated hereinbefore, the applicant is entitled to be enlarged on bail, at this stage.

15. As an upshot and taking a wholesome view of the matter, the applicant is directed to be released on bail on his furnishing personal bond with solvent surety of like amount to the satisfaction of the Trial Court/Duty Judge concerned as the case may be, subject to the other usual conditions to be imposed by the learned Trial Court/Duty Court.

16. Apart from the usual conditions, the learned Trial Court shall take



specific undertaking from the applicant that he will not leave the territorial jurisdiction of NCR Delhi without the permission of the trial Court. His passport has already been impounded so in any case he cannot leave the country. Apart therefrom, he shall also furnish the details of his residential address in Delhi where he intends to stay upon grant of bail. The applicant shall also give an undertaking to the learned Trial Court that he shall report to the Investigating Officer every two weeks during pendency of the trial.

17. Any observation made herein above is only for the purpose of disposing of the instant bail application and not to be construed, in any manner, as any expression on the merits of the pending case and the trial shall proceed without being influenced either way by the same. In case the applicant is found involved in any repeat offence while on bail, the prosecution shall be at liberty to seek cancellation of the bail granted to the applicant in the present case vide instant order.

18. Accordingly, the bail application alongwith pending application stands disposed of.

ARUN MONGA, J

SEPTEMBER 25, 2025

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