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

% ***Date of Decision : 03.11.2026***

\# **CNR No.DLHC010288752026**

\+ **BAIL APPLN. 2563/2026**

BOPULENGE MIREILLE NDOMBA .....Petitioner

Through: Mr. Tanya Kushwaha and Mr. J.S. Kushwaha, Advocates.

versus

CUSTOMS .....Respondent

Through: Mr. AtulTripathi, SSC, CBIC along with Mr. AkshaySagar, Advocate.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J. (*ORAL*)

1. The present petition has been filed by the petitioner, a national of the Democratic Republic of Congo, seeking regular bail under Section 483 of the Bharatiya Nagarika Surksha Sanhita, 2023 (BNSS) in File/C.No. VIII(AP)10/P&I/5268-C/ARRIVAL/2025 (registered as SC No. 560/2025), for offences under Sections 8, 21, 23 and 28 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS'), pending before the learned ASJ/Special Judge (NDPS), Dwarka Courts, Delhi.

2. The petitioner's earlier bail application was dismissed by the ASJ, Special Judge, (NDPS), Dwarka Courts, *vide* order dated 29.04.2026.

3. The relevant factual conspectus of the case is that on 19.02.2025, the petitioner arrived at T-3, IGI Airport, New Delhi at about 03:00 AM and was intercepted. Nothing was found in her baggage and on the same day since her

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health was continuously deteriorating, she was taken to Safdarjung Hospital, under the escort of Customs officers, at around 04:15 AM.

4. By order dated 20.02.2025 under Section 103 of the Customs Act, the learned JMFC permitted the petitioner's medical examination at Safdarjung hospital for her screening and scanning. Pertinently, the said order does not authorise the petitioner's detention. The petitioner eased out 6 capsules on 19.02.2025 and 2 capsules on 21.02.2025 which were totally found to contain 582 grams of cocaine. The petitioner was discharged from the hospital on 28.02.2025 at about 08:35 PM and thereafter she was taken to IGI Airport at about 10:00 PM.

5. After reaching the Airport, it is submitted that the petitioner "requested for rest before taking part in further Customs proceedings". The further Customs proceeding began at about 01:00 PM on 01.03.2025 and concluded at about 8:30PM on the same day. The petitioner was arrested under Section 43(b) of the NDPS Act at about 12:20 PM on 02.03.2025 and as per the respondent, was thereafter produced before the Court and remanded to judicial custody.

6. The complaint was filed on 26.08.2025 and the charges were framed on 12.11.2025. Only 2 out of 32 witnesses have been examined and the petitioner has been in custody for about 1 year and 8 months.

7. On 30.10.2026, this Court recorded the submissions of the learned counsel for the petitioner as follows:

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2. She has submitted as follows:

(i) It is pointed out that on the respondent's own record, the petitioner was discharged from the hospital at 08.35 PM on 28.02.2025 and was thereafter taken to IGI Airport, New Delhi. She was formally arrested only at about 12.20 PM on 02.03.2025. Thus, for about 38 hours, after the discharge, when no medical reason existed, she was held by the respondent without being formally arrested or being produced before a Magistrate in breach of Article 22(2) of the Constitution of India.

(ii) It is submitted that the petitioner does not understand English. She only understands French. On the respondent's own case, Google translate was used to communicate with her at the airport. Moreover, notices under Section 50 of the NDPS Act and Sections 102 and 103 of the Customs Act, on which the signatures of the petitioner were obtained, were pre-typed in English.

(iv)It is submitted that the petitioner has been in custody for a substantial period of time. Charges have been framed and there is no reason why her incarceration should continue indefinitely.

8. Learned counsel for the respondent vehemently opposes the present petition. It is submitted that the petitioner's health required immediate hospitalisation and an application under Section 103 of the Customs Act was filed within 24 hours and the same was allowed by the learned JMFC on 20.02.2025.

9. It is submitted that after her discharge, the petitioner herself requested for some rest before taking part in further Customs proceedings. It is pointed that the same is recorded in the *Panchnama* dated 01.03.2025 and the petitioner's statement under Section 67 of the NDPS Act (filed as Annexure

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A-7 and A-8 of the fresh Status Report dated 06.10.2026). It is submitted that the objections as to the manner of obtaining her consent, are a matter for trial.

10. This Court has considered the respective contentions of the parties.

11. The Article 22(2) of the Constitution of India requires that every person arrested and detained in custody is to be produced before the nearest Magistrate within 24 hours, excluding the time necessary for the journey, and forbids detention beyond that period without the Magistrate's authority. This Constitutional safeguard is sacrosanct.

12. In ***Directorate of Enforcement v. Subhash Sharma***, 2025 SCC OnLine SC 240, the Supreme Court held that the 24 hours run from when the person is actually taken into custody, not from the time of arrest shown on paper, and further held as under:-

> *"6. This argument cannot be accepted. Admittedly, the LOC was issued at the instance of the appellant-Directorate of Enforcement. By executing the LOC, the Bureau of Immigration detained the respondent at IGI Airport from 4th March 2022 on behalf of the Appellant. The finding of fact recorded in paragraph 10 is that undisputedly, the physical custody of the respondent was taken over by the appellant from the Bureau of Immigration at 11.00 hours on 5th March, 2022. Thereafter, at 1.15 hours on 6th March 2022, an arrest memo was prepared by ED at Raipur. He was produced before the Court at 3 p.m. on 6th March, 2024. The perusal of the arrest order(Annexure p-1) shows that the typed order was kept ready. The date and time of arrest were kept blank which appear to have been filled in by hand. Admittedly, the respondent was not produced before the nearest learned Magistrate within 24 hours from 11.00 a.m. on 5th March, 2022. Therefore, the arrest of the respondent is rendered completely illegal as a result of the violation of clause 2 of Article 22 of the Constitution of India. Thus, the continuation of the respondent in custody without producing him before the nearest Magistrate within the stipulated time of 24 hours is completely illegal and it infringes fundamental rights under clause 2 of Article 22 of the Constitution of India. Therefore, his arrest gets vitiated on completion of 24 hours in custody. Since there is a violation of Article 22(2) of the Constitution, even his fundamental right to liberty guaranteed under Article 21 has been violated."*
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> ***8.*** *Once a Court, while dealing with a bail application, finds that the fundamental rights of the accused under Articles 21 and 22 of the Constitution*

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of India have been violated while arresting the accused or after arresting him, it is the duty of the Court dealing with the bail application to release the accused on bail. The reason is that the arrest in such cases stands vitiated. It is the duty of every Court to uphold the fundamental rights guaranteed under Articles 21 and 22 of the Constitution."

13. Even where the contraband has been recovered and the person has been kept under the control of the officers, the person must be arrested and produced before the Court. In ***Vihaan Kumar v. State of Haryana***, (2025) 5 SCC 799, the Supreme Court observed as follows:

> ***"21.*** *An attempt was made by the learned Senior Counsel appearing for the first respondent to argue that after his arrest, the appellant was repeatedly remanded to custody, and now a charge-sheet has been filed. His submission is that now, the custody of the appellant is pursuant to the order taking cognizance passed on the charge-sheet. Accepting such arguments, with great respect to the learned Senior Counsel, will amount to completely nullifying Articles 21 and 22(1) of the Constitution. Once it is held that arrest is unconstitutional due to violation of Article 22(1), the arrest itself is vitiated. Therefore, continued custody of such a person based on orders of remand is also vitiated. Filing a charge-sheet and order of cognizance will not validate an arrest which is per se unconstitutional, being violative of Articles 21 and 22(1) of the Constitution of India. We cannot tinker with the most important safeguards provided under Article 22."*

14. Reference may also be made to the judgment of a Coordinate Bench of this Court in ***Habiob Bedru Omer vs Customs*** **2025 SCC OnLine Del 4263** wherein the following observations have been made:

> ***"28.*** *The applicant was in the continuous custody of the respondent from 21.05.2023 till 26.05.2023 without any authorisation. "Handing Over" and "Taking Over" memos annexed with the complaint leaves no manner of doubt that the custody of the applicant was being transferred from one Officer to the other on the basis of the rotational duties. Thus, in the opinion of this Court, such custody without any authority and without producing him before the concerned Magistrate or Special Court within 24 hours in accordance with law is completely illegal. Even if the applicant was under medication for the procedure being carried out, the same cannot be a ground to keep him in custody. Magistrates exercising power of remand or otherwise in respect of persons in hospital is not unheard of and well recognised procedure in law.*
> ***29.*** *Thus, the respondent without producing the applicant within 24 hours of*

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his detention continued to keep him in Safdarjung Hospital till his final arrest on 26.05.2023. In view of the above, this Court holds that the applicant was kept in illegal custody by the respondent from 21.05.2023 to 25.05.2023. His arrest on 26.05.2023 stands vitiated. In terms of the judgment of Hon'ble Supreme Court in Subhash Sharma (supra), rights of the applicant guaranteed under Articles 21 and 22 of the Constitution of India have been violated, and therefore, he has to be released on bail despite the restrictions provided under Section 37 of the NDPS Act. The applicant has been in judicial custody since the date of his formal arrest, i.e., 26.05.2023, and has undergone incarceration for more than 2 years as of today."

15. In the given factual conspectus, when particularly considering the time lapse between the period when the petitioner was detained and finally produced before the magistrate, the petitioner is entitled for bail for the following reasons:

(i) The period after the petitioner's discharge is decisive. The respondent's own records show that she was discharged from hospital at about 08:35 PM on 28.02.2025 and thereafter, no medical reason existed. The petitioner was then taken to the airport for further customs proceedings, but was neither arrested nor produced before the Magistrate until about 12:20 PM on 02.03.2025 i.e. nearly 40 hours late;

(ii) It is clear that the petitioner was not at liberty during the aforesaid period. The respondent relies upon the recording in the *Panchnama* dated 01.03.2025 and on the statement of the petitioner (appended as Annexure A-8 to the fresh Status Report dated 06.10.2026) which record that on reaching the airport, the petitioner requested for rest before taking part in further customs proceedings.

The same does not inure to the benefit of the respondent.

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The documents relied upon by the respondent itself record that the petitioner was taken back to the airport by the customs officers and that she asked the officer to allow her rest. Clearly, the petitioner was not at liberty during this period.

Further, a request for rest cannot be treated to be consent to detention beyond 24 hours and cannot dispense with the constitutional requirement for production before a Magistrate. In any event, it could at best account for the night of 28.02.2025. The *Panchnama* proceedings began at about 01:00 PM and concluded at 08:30 PM at about 01.03.2025. The petitioner was arrested at about 12:20 PM on 02.03.2025 *viz*. around 16 hours after the Panchnama was recorded. That period is not explained at all.

(iii) It is also noted that the order dated 20.02.2025 passed by the learned JMFC only permits the petitioners medical examination at the hospital, it neither authorised her detention nor covered the period after her discharge.

(iv) The recovery from the petitioner was complete by 21.02.2025 and the offence alleged against her stood fully disclosed. There was no impediment to her arrest and production, if necessary, with a prayer for her continued hospitalization. Yet she was not arrested while in hospital and, after her discharge, she was kept at the Airport for a significant period of time, before she was arrested.

16. This Court has not decided whether the period of hospitalisation itself amounted to custody, inasmuch as even excluding it, the period after

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discharge, exceeds 24 hours. This Court also takes note of the fact that the petitioner has been in custody for about 1 year and 8 months, only 2 out of 32 prosecution witnesses have been examined and the trial is likely to take considerable time to complete.

17. As the petitioner is a foreign national accused of an offence involving commercial quantity, the directions in paragraph 29 of ***Union of India v. Chidiebere Kingsley Nawchara***, 2026 SCC OnLine SC 1585 apply. Accordingly, the petitioner is directed to be released on regular bail on furnishing a bail bond in Form-47A in the sum of Rs. 50,000/- with two sureties of the like amount, to the satisfaction of the learned Trial Court, subject to the following conditions:-

i. The passport of the petitioner shall be deposited with the learned Trial Court, and she shall not travel outside the country without prior permission of the learned Trial Court;

ii. The petitioner shall register with the Foreigners Regional Registration Office (FRRO) within one week of release and inform the IO and the learned Trial Court in writing of having made such registration;

iii. The petitioner shall file before the learned Trial Court an affidavit indicating her source of income/funds within India and details of all bank accounts, if any, in the country;

iv. The petitioner shall provide her permanent address to the learned Trial Court and also the address where she will be residing during the pendency of the case;

v. The petitioner shall intimate the Investigating Officer (IO) of any change in her residential address and shall file an affidavit to that effect before the learned Trial Court;

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vi. The petitioner shall furnish her mobile number to the IO, which shall be kept in working condition and switched on at all times. The mobile number shall not be changed without prior intimation to the IO during the pendency of the trial;

vii. The petitioner shall report to the IO as and when called upon to do so;

viii. The petitioner shall not, directly or indirectly, contact the complainant, any prosecution witness, or their family members;

ix. The petitioner 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 in the case in any manner whatsoever;

x. The petitioner shall appear before the learned Trial Court on each and every date of hearing;

xi. The petitioner shall not indulge in any criminal activity during the period of bail; and

xii. The petitioner shall report to the concerned IO on the first Monday of every month at 11:00 AM and shall be discharged by 01:00 PM, after her presence has been recorded and the necessary formalities have been completed.

18. In terms of paragraph 29 of ***Chidiebere Kingsley Nawchara*** **(supra)**, the sureties shall be verified within 3 days and the verification report placed before the learned Trial Court prior to the release of the petitioner; the residential address and contact details of the petitioner within India shall be physically re-verified prior to her release; a lien/charge equal to the amount of the surety bond shall be created on the property of each surety; and the IO shall inform the Embassy of the Democratic Republic of Congo, in writing, of the petitioner's involvement in the present case. If the petitioner is unable to

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secure two sureties despite sufficient effort, it shall be open to her to apply to the learned Trial Court for relaxation of that condition.

19. If any of the above conditions is breached, it shall be open to the respondent to seek cancellation of bail.

20. The present application is disposed of in the above terms.

21. The learned Trial Court is requested to expedite the trial proceedings to the extent feasible.

22. It is clarified that the observations made herein are solely for the purpose of deciding the present bail application and shall neither influence the trial proceedings nor be construed as an expression of opinion of this Court on the merits of the case.

23. A copy of this order be communicated electronically to the concerned Jail Superintendent, the learned Trial Court and the concerned FRRO for information and necessary compliance.

SACHIN DATTA, J

NOVEMBER 3, 2026/*at/nb*

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