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

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Date of Decision: 28.03.2026+ **BAIL APPLN. 2652/2025**

JAMES

.....Petitioner

Through: Mr. Anup Kr. Das, Mr. Uday Chauhan, Ms. Prachi Sharma and Ms. Ishita Singh, Advocates.

versus

THE STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Amit Ahlawat, APP with Inspector Satish Kumar, Traffic, Inspector Shiv Kumar, ANTF/Crime and SI Dharmendra Singh, PS WR-1/Crime.

CORAM: JUSTICE GIRISH KATHPALIA**J U D G M E N T (ORAL)**

1. The accused/applicant seeks regular bail in case FIR No. 83/2022 of Police Station Crime Branch for offence under Section 21/25 NDPS Act & 14 Foreigners Act.

1.1 This bail application came up for the first hearing on 21.07.2025 before the predecessor bench and thereafter continued getting adjourned before different benches. Along with 179 such old pending bail applications, this application also was transferred to this bench.



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1.2 Today is the first hearing before me.

2. Broadly speaking, allegation against the accused/applicant is that on the basis of secret information, a raid was conducted by police in which the accused/applicant and his co-accused Emmanuel, both being Nigerian nationals were apprehended on a two wheeler scooter being driven by the accused/applicant. After completion of procedural formalities, two parcels of heroin, one weighing 600 grams while other weighing 45 grams were recovered from the accused/applicant. From the co-accused, one parcel containing 360 grams heroin was recovered.

3. On behalf of accused/applicant, it is contended that according to prosecution case, the parcels of contraband were kept in a black bag and the said black bag also was seized by the IO, but the said black bag was not produced before the learned Magistrate at the time of drawing samples. It is argued that the accused/applicant was arrested at 08:30 pm on 21.05.2022 but the complaint was received at the police station at 06:30 am on 22.05.2022. It is also contended that the owner of the two wheeler scooter allegedly being driven by the accused/applicant was not traced out. It is also argued by learned counsel that grounds of arrest were not furnished to the accused/applicant. Lastly, it is contended that since the accused/applicant has spent three years ten months in jail, the twin conditions under Section 37 NDPS Act have to be mandatorily overlooked in view of order passed by the Supreme Court in the case of *Rabi Prakash vs. State of Odisha*, 2023 SCC OnLine SC 1109.



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4. On the other hand, learned APP contends that all arguments advanced on behalf of accused/applicant are completely contrary to the record. It is pointed out by learned APP that the black bag was definitely produced before the learned Magistrate as would be reflected from photographs taken in the court. As regards grounds of arrest, learned APP has produced a copy of the application and order of first remand, which bears signatures of the accused/applicant reflecting receipt of copy of that application, which enlists the grounds. As regards owner of the two wheeler scooter, it is submitted that the owner was also traced out and was examined by the IO. Regarding the timing of arrest, it is submitted by learned APP that the accused/applicant was apprehended and not arrested at 08:30 pm on 21.05.2022 and the *tehrir* (signed complaint forming basis of FIR) was received at police station at 04:00 am on 22.05.2022 and the accused/applicant was arrested at 08:30 am on 22.05.2022. Further, it is explained by the IO/SI Dharmendra Singh that despite extensive efforts, neither passport nor visa of the accused/applicant could be obtained as even the concerned embassy and FRRO have no information about the accused/applicant, so it is submitted that if released on bail, the accused/applicant would flee. It is also submitted by learned APP that bail application of the co-accused, from whom much lesser quantity of heroin was recovered has already been dismissed by a coordinate bench as withdrawn on 13.10.2025.

5. Having examined the record, I am in agreement with learned APP that the contentions raised by learned counsel for accused/applicant are contrary



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to record.

5.1 So far as the black bag is concerned, as per prosecution case, the recovered heroin was in polythene parcels kept in the black bag. Further, according to prosecution case, the heroin parcels were placed back in the black bag by the IO and the same was converted into cloth *pullanda* sealed with the seal of the IO. It is that cloth *pullanda* which was produced before the trial court. According to order dated 30.05.2022 of the learned Magistrate, photographs of the *pullanda* also were taken at the time of drawing samples. Those photographs leave no doubt that the said *pullanda* contained black bag as well, going by the size of the *pullandas* reflected in the photographs. Quantity of 600 grams heroin cannot lead to such big *pullanda* as depicted in the photographs.

5.2 As regards the contention raised by learned counsel for the accused/applicant on the basis of ***Rabi Prakash*** (supra), each case has to be tested on its merits. The present case is completely distinguishable from ***Rabi Prakash*** (supra). Present is the case of two foreigners from whom commercial quantity of contraband was recovered. And there is no passport or visa or any other identity document of the accused persons with the help whereof they could be tracked down to ensure that they face trial. So, even *de hors* the twin conditions stipulated under Section 37 NDPS Act, the accused/applicant cannot be released on bail. While dealing with the cases pertaining to narcotics and psychotropic substances, the court has to keep in mind that peddling in such substances is not just a matter of making someone ecstatic or “high”. The money involved in such peddling has wide



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ramifications at international level, including terrorism, apart from serious impacts on overall economy of the country. That was the purpose behind enactment of twin conditions laid under Section 37 of the NDPS Act.

6. Going by the above circumstances, I do not find it a fit case to grant bail to the accused/applicant. Therefore, the bail application is dismissed.
7. Copy of this order be sent to the concerned Jail Superintendent.

**GIRISH KATHPALIA
(JUDGE)**

MARCH 28, 2026/dr