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

Reserved on: 11.11.2025
Date of Decision: 20.11.2025

\+ BAIL APPLN. 437/2025 & CRL.M.A. 3107/2025

AIENADDIN GURGIJ .....Petitioner

Through: Ms. Shweta Mehta and Mr. Prem Kishore Tripathi, Advs.

versus

CUSTOMS THROUGH AIR CUSTOMS OFFICER .....Respondent

Through: Mr. Gibran Naushad, Senior Standing Counsel with Mr. Harsh Singhal and Mr. Suraj Shekhar Singh, Advs. with Mr. Sunil, Air Customs Officer (A.C.O.)

CORAM:
HON'BLE MR. JUSTICE AJAY DIGPAUL

J U D G M E N T

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1. The present application seeks regular bail under Section 439 of the Code of Criminal Procedure, 1973[1] (now Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023[2]) in connection with Complaint case No. VII(AP)10/P&I/3192A/Arrival/2021 dated 04.06.2021, registered by the Air Customs, IGI Airport, New Delhi, for offences punishable under Sections 21/23/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985[3]. The case is pending as SC No. 804/2021 before the learned Special Judge (NDPS), New Delhi.

[1] Hereinafter "CrPC"
[2] Hereinafter "BNSS"
[3] Hereinafter "NDPS Act"

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Factual Matrix

2. On 04.06.2021, acting on specific information, officers of the Air Customs Unit at Indira Gandhi International Airport, Terminal-3, New Delhi, kept surveillance on passengers arriving from Dubai on Emirates Flight EK-516. Among the passengers so intercepted were two Afghan nationals, namely the present petitioner, Aienaddin Gurgij, and his cousin, Bashir Ahmad Gurgich, both residents of Nimroz, Afghanistan.

3. It is the prosecution case that after the said flight landed at IGI Airport, the petitioner and the co-accused collected their checked-in trolley bags from the conveyor belt and proceeded towards the "Green Channel" meant for passengers with "nothing to declare". On the basis of the prior input, their baggage was segregated and subjected to X-ray screening. Suspicious images were allegedly noticed in two trolley bags bearing baggage tag nos. 887495 and 887496, attributed respectively to the petitioner and the co-accused.

4. Petitioner and the co-accused were then intercepted and brought to the customs examination area, where two independent panch witnesses were called. After disclosure of identity by the Air Customs officer and explanation of the purpose of the proceedings, the personal search of the petitioner and the co-accused was conducted, and their checked-in trolley bags were opened for examination in the presence of the panch witnesses.

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5. On opening the trolley bag allegedly found in possession of the petitioner, the customs officers found multiple consumer-brand shampoo and hair colour bottles whose seals appeared tampered with. On further inspection, the officers allegedly found that the bottles contained a black-coloured thick liquid having a peculiar smell, which aroused suspicion. The contents of these bottles were poured out, mixed and weighed. As per the record, the total weight of the thick liquid substance recovered from one set of bottles was approximately 10.96 kilograms.

6. Similarly, on examination of the trolley bag attributed to co-accused Bashir Ahmad Gurgich, another set of shampoo/hair colour bottles was allegedly recovered. These bottles too were found to contain thick black liquid, which, on being poured, mixed and weighed, yielded a further quantity of substance. The cumulative gross weight of the liquid suspected substance recovered from the baggage of both the petitioner and the co-accused is stated to be about 19.48 kilograms.

7. Samples in duplicate were allegedly drawn from the recovered liquid in the presence of the panch witnesses, the petitioner and the co-accused. The samples and the remaining bulk substance were sealed with the customs seal, and necessary seizure and detention memos were prepared. The seized articles were taken into custody under the NDPS Act. Detention receipts issued in the names of the petitioner and the co-accused record the detention of a black-coloured thick liquid substance, identified as heroin, weighing approximately

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10.60 kilograms in the case of the petitioner, and "concealment material" contained in corrugated cartons in the case of the co-accused, both described as having been sealed with the customs seal.

8. The samples so drawn were forwarded to Central Revenues Control Laboratory[4], New Delhi, for chemical analysis. As per the CRCL reports placed on record, the samples tested positive for diacetylmorphine (heroin), a narcotic drug notified under the NDPS Act. The prosecution, therefore, treats the quantity of substance recovered, i.e. about 19.48 kilograms of heroin in liquid form, as a "commercial quantity" within the meaning of the NDPS Act.

9. During enquiry under Section 53 of the NDPS Act, summons under Section 67 of the NDPS Act were issued to the petitioner, the co-accused and various witnesses including housekeeping staff and other airport personnel who had witnessed the search and seizure. Statements of such witnesses were recorded under Section 67, including that of Mr. Kaptan (housekeeping staff), who confirmed his presence throughout the search and recovery proceedings on 04.06.2021 and identified the petitioner and the co-accused as the passengers from whose baggage the bottles containing the black liquid substance were recovered.

10. Petitioner and the co-accused also tendered their voluntary statements under Section 67 of the NDPS Act to the customs officers. In these statements, they are alleged to have admitted that they were travelling together from Afghanistan to India, that the shampoo/hair

[4] Hereinafter "CRCL"

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colour bottles in question had been handed over to them abroad by persons known to them, and that they were to deliver the said bottles to a contact person in India in return for monetary consideration, despite being aware that transporting narcotic drugs to India was illegal.

11. On completion of the enquiry, a complaint under the NDPS Act was filed before the learned Special Judge (NDPS), New Delhi, against the petitioner and the co-accused for offences under Sections 21(c), 23(c) and 29 of the NDPS Act, alleging that both had jointly and knowingly attempted to illicitly import and possess commercial quantity heroin concealed in their checked-in baggage while arriving at IGI Airport, Terminal-3, New Delhi, from Dubai on 04.06.2021. Cognizance was taken and the complaint was registered as SC No. 804/2021.

13. The petitioner was arrested on 04.06.2021 and has remained in continuous judicial custody since that date. This is his first application for regular bail before this Court.

14. It is not in dispute that there were originally two accused in the case. During pendency of the proceedings, co-accused Bashir Ahmad Gurgich, who was lodged in Central Jail, Tihar, expired on 01.08.2021. Proceedings against him have abated, and the trial now continues only against the present petitioner.

15. After the complaint was filed, the learned Special Judge took cognizance and, *vide* order dated 29.04.2022, framed charges against the petitioner under Sections 21(c), 23(c) and 29 of the NDPS Act in

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respect of the alleged recovery of commercial quantity heroin. The trial commenced thereafter on 18.08.2022.

Submissions on behalf of the petitioner

16. Ms. Shweta Mehta, learned counsel for the petitioner submits at the outset that the petitioner is in judicial custody since 04.06.2021 and has, thus, undergone incarceration for more than four years without conclusion of trial. It is pointed out that the chargesheet in Complaint case No. VII(AP)10/P&I/3192A/ARRIVAL/2021 was filed before the learned Special Court, cognizance was taken, and charges under Sections 21, 23 and 29 of the NDPS Act were framed on 29.04.2022. Despite this, out of sixteen prosecution witnesses cited, only six witnesses have been examined so far, and the examination of the remaining ten witnesses is still pending. In these circumstances, it is urged that the trial is clearly not at the verge of conclusion and is likely to take considerable further time.

17. It is further submitted that there were originally two accused persons in the case, namely the present petitioner, Aienaddin Gurgij, and his cousin, Bashir Ahmad Gurgij. During the pendency of trial, co-accused Bashir Ahmad expired while in judicial custody, prior to the framing of charges, as a result of which the proceedings against him have abated and the case is now continuing only against the present petitioner.

18. Learned counsel next draws attention to the personal circumstances of the petitioner. It is submitted that the petitioner is a

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national of Afghanistan and a resident of that country, where his aged parents, wife and four young children reside. Owing to his continued incarceration for over four years, the petitioner has not been able to see or support his family during this entire period. It is submitted that the petitioner is the sole bread earner of the family, and his prolonged detention has caused severe financial and emotional hardship to his dependants.

19. On the merits of the case, it is contended that the petitioner has been falsely implicated and that he had no knowledge of, or conscious possession over, the alleged contraband. Learned counsel submits that, as per the prosecution itself, the contraband is stated to have been recovered from checked-in baggage and not from the person of the petitioner. The petitioner was travelling by air from Afghanistan to Delhi and, according to him, was travelling alone. During the journey he incidentally came to know that his cousin Bashir Ahmad was also on the same flight. It is urged that the baggage in question had been booked and checked prior to boarding and was not in the physical possession of the petitioner during the flight. The bags came into his possession only later, in the customs area of the airport. It is, therefore, submitted that the arrest and implication of the petitioner merely on the basis of recovery from such baggage, which was not admittedly in his possession while on board, is entirely unjustified.

20. Learned counsel emphasises that even on the prosecution version, nothing incriminating was recovered from the personal search of the petitioner. The entire case rests on the alleged seizure of

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narcotic drugs from baggage which the prosecution attributes to the petitioner. It is specifically urged that it is still a matter of serious contestation as to whose bag the contraband was actually recovered from, particularly in view of the fact that there were two related passengers travelling, and one of them, the cousin Bashir Ahmad, has since died. Learned counsel submits that this uncertainty regarding ownership of the bag and the absence of any independent material showing that the baggage belonged to the petitioner militates against a finding of conscious possession at this stage.

21. Learned counsel then invites attention to the nature and condition of the alleged contraband. It is submitted that, according to the prosecution, approximately 10.96 kilograms of heroin was allegedly recovered, concealed in bottles of shampoo and hair colour. At the time of seizure and sampling, the substance is stated to have been in the form of a thick black liquid. However, when the case property and sample parcels were produced during trial, the substance inside was noticed to be in solid form with a dark grey/ash colour. Counsel submits that this change in the physical state and appearance of the alleged contraband has been recorded in the testimony of the relevant prosecution witness and noted by the learned Trial Court itself. This, according to the petitioner, raises grave doubt about the manner of preservation, safe custody and integrity of the seized material, and suggests possible tampering or deterioration, thereby weakening the prosecution case.

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22. It is further submitted that the earlier bail application filed by the petitioner before the learned Sessions Court was dismissed solely with reference to Section 37 of the NDPS Act, on the ground that the seizure was of 10.96 kilograms of heroin, which is a commercial quantity. Learned counsel contends that the learned Sessions Court mechanically applied Section 37 without appreciating the peculiar facts of the case, including the unresolved issue regarding ownership of the baggage, the absence of recovery from the petitioner's person, and the change in the nature of the seized substance. It is urged that the mere fact that the alleged quantity is commercial cannot, by itself, justify indefinite incarceration, particularly when the trial has been unduly protracted.

23. Building on this, learned counsel submits that the rigours of Section 37 of the NDPS Act cannot be treated as an absolute bar to the grant of bail and must be reconciled with the constitutional mandate of personal liberty under Article 21 of the Constitution of India. It is contended that, in a case where the petitioner has already undergone substantial incarceration as an undertrial, where the trial is moving at a slow pace, and where serious issues have been raised regarding conscious possession and the integrity of the contraband, this Court can and ought to exercise its discretion to enlarge the petitioner on bail, subject to appropriate conditions.

24. Learned counsel also draws support from two decisions of this Court, namely ***Vinay Sharma v. State Govt. of NCT of Delhi***[5] and

[5] BAIL APPLN. 1626/2025

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Mohd. Idrish Ali v. State NCT of Delhi[6]. It is submitted that in both these cases, this Court was pleased to grant bail to the accused persons facing prosecution under the NDPS Act, notwithstanding the allegation of commercial quantity, having regard, *inter alia*, to the length of custody already undergone and the pace of trial. Relying on these precedents, counsel argues that the present case stands on an even stronger footing, inasmuch as the petitioner has been in custody since June 2021, the trial is far from conclusion, and there exist substantial arguable issues on merits.

25. It is next contended that the petitioner has clean antecedents and has never been involved in any other criminal case. It is stated that apart from the present case, there is no other case registered against him. It is further submitted that the investigation in the present case is complete, the chargesheet has been filed, and no further custodial interrogation of the petitioner is required. No recovery remains to be effected at his instance, and there is no likelihood of his tampering with the evidence or influencing any witness during the course of trial.

26. It is submitted that, in the totality of circumstances, particularly the prolonged incarceration of more than four years, the slow progress of trial, the doubts raised regarding possession and integrity of the case property, the clean antecedents of the petitioner, and the principles governing bail as reaffirmed by the Hon'ble Supreme Court and this Court, the petitioner deserves to be enlarged on regular bail pending trial.

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[6] BAIL APPLN. 776/2025

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Submissions on behalf of the respondent

27. Mr. Gibran Naushad, learned Senior Standing Counsel for the respondent opposes the bail application and submits that the present case does not satisfy the stringent requirements of Section 37 of the NDPS Act and, therefore, no ground for grant of regular bail is made out. It is emphasised at the outset that the petitioner was intercepted at IGI Airport, New Delhi, on 04.06.2021, and from his brown-coloured checked-in trolley bag 30 shampoo/hair colouring bottles containing black, thick liquid weighing 10.96 kg were recovered, which, upon testing, have been found to contain heroin. In addition, 22 similar bottles containing 8.520 kg of the same black liquid were recovered from the checked-in baggage of the petitioner's cousin and co-accused, Bashir Ahmad Gurgich.

28. Learned counsel submits that representative samples of 5 millilitres each were drawn from all 30 bottles recovered from the petitioner and sent to the CRCL for analysis. The CRCL report dated 26.08.2021 records that each of the thirty samples tested positive for diacetylmorphine (heroin), a narcotic drug under the NDPS Act. Thus, there is, at this stage, scientific confirmation that what was recovered from the petitioner's bag is heroin.

29. It is contended that the quantity of heroin recovered from the petitioner alone is 10.96 kg, which far exceeds the notified commercial quantity of 250 grams for heroin. Consequently, the rigours of Section 37 of the NDPS Act squarely apply. Section 37

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places a very high threshold for the grant of bail in cases involving commercial quantity, and mandates that the Court must be satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and is not likely to commit any offence while on bail. It is submitted that the petitioner has not made out any material that could satisfy either of the twin conditions.

30. Learned counsel further submits that, during enquiry, the petitioner tendered a voluntary statement under Section 67 of the NDPS Act wherein he admitted possession, recovery and attempt to import heroin into India. In this statement, the petitioner has also disclosed that he and the co-accused were working for one individual, namely, Isha Khan, and that they were smuggling drugs on his behalf. It is urged that these statements clearly establish the petitioner's conscious possession and complicity in the offence, and cannot be brushed aside at the stage of bail.

31. As regards the petitioner's contention that no contraband was recovered from him or that he had no knowledge of any narcotics in his baggage, learned counsel submits that such a plea is contrary to the record. It is pointed out that the petitioner himself has admitted that the checked-in trolley bag, from which the contraband was recovered, belonged to him. In the face of this admission, the attempt to now deny recovery from his baggage is described as a bald and self-serving plea, meant only to mislead the Court. The respondent also relies on the settled legal position that where recovery is effected from the baggage belonging to the accused, the burden lies on the accused to

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establish that he was in "unconscious possession" and had no knowledge of the contraband; such a defence cannot be presumed at the bail stage.

32. Dealing with the argument regarding the physical condition of the case property, learned counsel submits that the petitioner's reliance on the substance being in liquid form at the time of seizure and in solid form when produced before the Court is misconceived. It is explained that the change from liquid to solid form is due to evaporation over a period of time and, in any event, does not constitute any illegality attributable to the prosecution. At best, such issues pertaining to the nature and condition of the case property are triable and can only be adjudicated upon during trial. They cannot justify grant of bail in a case involving commercial quantity heroin.

33. Learned counsel also disputes the petitioner's contention regarding delay in trial. It is submitted that the complaint has already been filed; charges under Sections 21(c), 23(c) and 29 NDPS Act were framed on 29.04.2022; and the case is actively being tried by the learned Special Judge, NDPS, Dwarka Courts. Out of a total of 16 witnesses, 6 witnesses, including the Investigating Officer, have already been examined and 5 witnesses have been dropped. Only 5 witnesses now remain to be examined. In these circumstances, it is submitted that the trial is proceeding with due expedition and it cannot be said that there is such delay as would warrant bail.

34. In this context, reliance is placed on the judgment of the Hon'ble Supreme Court in ***Supreme Court Legal Aid Committee***

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(Representing Undertrial Prisoners) v. Union of India,[7] wherein it was directed that an undertrial charged with offences under the NDPS Act carrying a minimum sentence of 10 years and minimum fine of ₹1 lakh would be entitled to bail on the ground of prolonged custody only if he has been in jail for not less than five years. It is submitted that the petitioner has not completed five years of incarceration and, therefore, cannot invoke the said decision to seek bail on the ground of delay. The respondent further points out that this principle has been followed by this Court in recent decisions in ***Pauline Nalwoga v. Customs***[8] and ***Umar Sebandeke v. Customs*** [9]while dealing with bail pleas based on prolonged custody in NDPS matters.

35. Learned counsel for the respondent also places reliance on the decisions of the Hon'ble Supreme Court in ***Union of India v. Ram Samujh***[10], and ***Union of India v. Ajay Kumar Singh***[11], to contend that Section 37 of the NDPS Act embodies a clear legislative mandate that persons accused of offences involving commercial quantity narcotics are not to be released on bail unless the stringent twin conditions are satisfied. In particular, the Court must be satisfied, on reasonable grounds, that the accused is not guilty of the offence and is not likely to commit any offence while on bail. It is submitted that no such satisfaction can be recorded in the present case in view of the recovery

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[7] (1994) 6 SCC 731
[8] 2024 SCC OnLine 7255
[9] 2024 SCC OnLine Del 4826
[10] (1999) 9 SCC 429
[11] 2023 SCC OnLine SC 346

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of commercial quantity heroin from the petitioner's bag and his own inculpatory statement under Section 67.

36. Further, the judgment of this Court in ***Francis Marion GEGG v. Customs***[12] is pointed out, where bail was declined in a case involving commercial quantity heroin. This Court, while emphasising the nature of heroin as a "hard drug", noted its severe health consequences, highly addictive nature, high propensity for overdose, and grave threat to public health. Learned counsel submits that similar considerations arise in the present case, where the contraband is heroin of extremely high quantity and estimated market value of nearly ₹76 crore, and this also weighs heavily against the grant of bail.

37. The respondent further submits that the various grounds argued by the petitioner, such as his claim that no substance was recovered from him, that he was unaware of drugs in his baggage, or that the case property has changed form, all relate to disputed questions of fact which must be adjudicated at trial on the basis of evidence. It is urged that this Court, while considering an application under Section 483 of BNSS read with Section 37 of the NDPS Act, should not conduct a mini-trial or undertake a detailed evaluation of such factual controversies.

38. Lastly, the respondent stresses that the petitioner is an Afghan national and, if released, there is a serious risk of his absconding and not being available to face trial. It is submitted that, given his foreign nationality, absence of roots within India, and the serious nature of the

[12] **2024 SCC OnLine Del 6834**

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allegations, there exists a genuine apprehension that he may flee the jurisdiction if enlarged on bail. In such circumstances, and keeping in view the gravity of the offence, the quantity and market value of the contraband, the statutory bar under Section 37, and the larger interest of society, it is submitted that no indulgence is called for and the present application for regular bail deserves to be rejected.

Analysis

39. This Court has carefully considered the rival submissions advanced on behalf of the petitioner as well as the respondent and has also perused the material placed on record.

40. At the outset, it is necessary to recall the statutory scheme under Section 37 of the NDPS Act. In respect of offences involving commercial quantity, the provision contains a specific embargo on the grant of bail. No person accused of such offence, concerning commercial quantity can be released on bail unless two cumulative conditions are satisfied, in addition to the ordinary tests for bail. First, the Public Prosecutor must be given an opportunity to oppose the application. Second, where the application is opposed, the Court must be satisfied that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. The Hon'ble Supreme Court in ***Ram Samujh (Supra)*** has repeatedly emphasised that these requirements are not mere formalities, but a legislative mandate which circumscribes the jurisdiction to grant bail in NDPS matters involving

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commercial quantity. More recently, in ***Union of India v. Vigin K. Varghese***,[13] the Hon'ble Supreme Court has reiterated that offences involving commercial quantity stand on a distinct statutory footing and that Section 37 enacts a specific embargo on the grant of bail which can be relaxed only upon a careful appraisal of the material and a clear recording of satisfaction on both the twin requirements.

41. In the present case, the respondent has opposed the bail application. The core question, therefore, is whether this Court can, at this stage, record satisfaction that there are reasonable grounds to believe that the petitioner is not guilty of the offences alleged and that he is not likely to commit any offence while on bail. The record placed before this Court includes, *inter alia*, the alleged recovery of commercial quantity of heroin from checked-in baggage associated with the petitioner, and a statement attributed to him under Section 67 of the NDPS Act, in which he is stated to have admitted his role in the attempted importation and to have disclosed the broader *modus* and association. Without expressing any concluded view on the ultimate admissibility or evidentiary weight of such statement, it nevertheless forms part of the prosecution material at this stage and cannot be completely disregarded while assessing the existence of a *prima facie* case. Having regard to the nature of the recovery alleged, the surrounding circumstances recorded in the complaint and chargesheet, and the incriminating material presently available, this Court is unable to hold that there are reasonable grounds for believing that the

[13] **2025 SCC OnLine SC 2440**

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petitioner is not guilty of the offences under Sections 21(c), 23(c) and 29 of the NDPS Act. The first limb of Section 37, therefore, is not satisfied.

42. The case of the prosecution is that 10.96 kilograms of heroin were recovered from checked-in baggage linked to the petitioner at the airport. This quantity is far in excess of the notified commercial quantity of 250 grams for heroin under the NDPS Act, and the estimated market value of the contraband has been stated to be approximately ₹76 crores. The petitioner, on the other hand, has sought to cast doubt on the integrity of the case property by pointing out that at the time of seizure and sampling, the contents in the bottles were allegedly in thick liquid form, whereas at the time when the case property was produced in Court during the testimony of PW-1, the same appeared in solid, dark grey or ash-coloured form. This change in physical form is strongly relied upon as indicative of tampering or unreliability of the seized substance.

43. The explanation offered by the respondent is that the change in the appearance and consistency of the substance is a natural consequence of evaporation and passage of time, particularly since the narcotic substance, as per the complaint, was initially in liquid form concealed in multiple shampoo and hair colour bottles and later appeared more solidified when produced during trial. The respondent submits that this is a pure question of evidence which falls within the domain of the Trial Court, and that the mere change in form over time

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cannot, by itself, be treated as demolishing the seizure or the prosecution case at the stage of bail.

44. This Court finds merit in the contention that such disputations are essentially matters of appreciation of evidence and expert testimony, and are not amenable to definitive adjudication in proceedings for bail under Section 37.

45. On an overall appreciation of the material presently before the Court, the record does indicate, at least *prima facie*, the recovery of 10.96 kilograms of heroin from checked-in baggage associated with the petitioner and the existence of a statement under Section 67 in which he is stated to have admitted his role in the attempted importation. The alternative narrative suggested by the petitioner, that the contraband was planted, or that it was shifted from baggage allegedly belonging to his cousin, coupled with the emphasis on the absence of personal recovery from his body, are all defences that can certainly be made before, and examined by, the learned Trial Court at the appropriate stage. However, at this stage, they cannot be accepted in preference to the prosecution version so as to enable this Court to record a finding that there are reasonable grounds to believe that he is not guilty. To do so would, in effect, require this Court to discount the seizure and the prosecution material on a contested factual foundation, which is impermissible in bail proceedings governed by Section 37.

46. As regards the factor of prolonged incarceration and the pace of trial, it has been urged on behalf of the petitioner that he has been in custody for more than four years and that continued incarceration, in

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circumstances where the trial is yet to conclude, would render pre-trial detention punitive. It is true that the Hon'ble Supreme Court in ***Supreme Court Legal Aid Committee (Supra)*** laid down a framework for considering release of undertrials in NDPS cases where they have undergone prolonged custody, including a benchmark of five years in certain categories of cases involving commercial quantity. However, the same judgment also makes it clear that the rigours of Section 37 continue to apply and that the Court must carefully balance individual liberty with the legislative policy underlying the NDPS Act.

47. More significantly, the legal position has been recently clarified and restated in ***Vigin K. Varghese (Supra)***, where the Hon'ble Supreme Court has held in categorical terms that delay in trial or prolonged incarceration, by itself, cannot justify the grant of bail in cases involving commercial quantity of narcotic drugs when the mandatory twin conditions under Section 37 remain unmet. In that case, the High Court had granted bail largely on the grounds of long custody, anticipated delay in trial, lack of antecedents and an asserted absence of direct proof of knowledge. The Hon'ble Supreme Court found this approach legally unsustainable and set aside the bail orders, holding that the High Court therein had ignored the statutory threshold that requires a finding that there are reasonable grounds to believe that the accused is not guilty and is not likely to commit an offence while on bail. The Court emphasised that offences involving commercial quantity stand on a distinct statutory footing, and that Section 37

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enacts a specific embargo which cannot be diluted merely on the basis of long custody or trial delay.

48. In the present case, although the petitioner has been in custody for a substantial period, the material placed on record indicates that the complaint has been filed, charges under Sections 21(c), 23(c) and 29 NDPS Act have been framed, and the trial is actively progressing before the learned Special Judge (NDPS). A number of witnesses, including the Investigating Officer, have already been examined, some have been dropped, and only a limited number of witnesses remain to be examined. On these facts, it cannot be said that the trial is either stagnant or that there is such inordinate delay, attributable to the prosecution or the Court, as to warrant a relaxation of the statutory constraints of Section 37. In any event, in view of the position made clear in ***Vigin K. Varghese***, long incarceration and the anticipated time required to complete the trial cannot, in isolation, be treated as decisive factors so long as the twin conditions under Section 37 are not satisfied. The relevant portion of the judgment is reproduced as under:

> "**17.** The High Court then, on the strength of those premises, recorded a finding that there exist reasonable grounds to believe that the applicant is not guilty of the alleged offence, treating prolonged incarceration and likely delay as the justification for bail. Such a finding is not a casual observation. It is the statutory threshold under Section 37(1)(b)(ii) which would disentitle the discretionary relief and grant of bail must necessarily rest on careful appraisal of the material available. A conclusion of this nature, if returned without addressing the prosecution's assertions of operative control and antecedent involvement, risks trenching

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> upon appreciation of evidence which would be in the domain of trial court at first instance.
>
> **18.** This Court ordinarily shows deference to the discretion exercised by the High Court while considering the grant of bail. However, offences involving commercial quantity of narcotic drugs stand on a distinct statutory footing. Section 37 enacts a specific embargo on the grant of bail and obligates the Court to record satisfaction on the twin requirements noticed above, in addition to the ordinary tests under the Code of Criminal Procedure."

49. Turning to the nature of the contraband and the attendant societal interest, it is not in dispute that the substance involved in the present case is heroin. The deleterious impact of heroin on public health has been noted by Courts on several occasions. In ***Francis Marion GEGG (Supra)***, while considering a bail application in respect of a foreign national apprehended at the airport with nearly 10 kilograms of heroin, this Court underscored that heroin is a hard drug which directly impacts the central nervous system, has a high propensity for addiction and overdose, and poses a significantly graver threat to public health than softer substances. The Court observed that the nature of the contraband seized is a relevant factor that weighs heavily against the grant of bail in cases falling within the rigours of Section 37. The same reasoning applies with even greater force where the alleged recovery, as in the present case, is more than ten kilograms of heroin, with a stated market value of approximately ₹76 crores.

50. The gravity of such offences is not limited to the quantum of punishment prescribed by statute, but extends to the broader societal consequences of trafficking in highly addictive narcotic substances.

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The Hon'ble Supreme Court in ***Ram Samujh (Supra)*** has described narcotics offences as having a deadly impact on society, particularly on vulnerable sections such as adolescents and students, and has cautioned that persons involved in such activities are a hazard to the community. These observations continue to inform the interpretation of Section 37 and reinforce the need for a cautious approach where the alleged contraband is of a commercial quantity of a hard drug such as heroin.

51. In addition, the prosecution has highlighted that the petitioner is a foreign national. Courts have recognised that in serious NDPS prosecutions where the accused is a foreign national and faces the prospect of a long custodial sentence upon conviction, the risk of abscondence is a relevant consideration while applying the second limb of Section 37, namely whether the accused is likely to commit an offence or evade the process of law if released on bail. In ***Francis Marion GEGG***, this Court specifically adverted to the applicant's status as a foreign national and the corresponding flight risk in the context of heroin trafficking. In the present case, no material has been placed before this Court to demonstrate the existence of such deep and enduring ties to the local jurisdiction as would effectively secure the petitioner's presence throughout the trial, especially having regard to the seriousness of the allegations and the weight of the evidence relied upon by the prosecution at this stage. In these circumstances, this Court is not in a position to record satisfaction that the petitioner is not likely to commit any offence or evade the process of law while on

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bail, and the second limb of Section 37 also cannot be said to be fulfilled.

52. The petitioner has placed reliance on decisions of this Court, including ***Vinay Sharma (Supra)*** and ***Mohd. Idrish Ali (Supra)***, in which bail was granted to the respective accused. Those judgments, however, turned on their specific facts, including the nature and quantity of recovery, the role attributed to the accused, the period of custody undergone, and the precise stage and progress of the trial. They cannot be read as laying down a general rule that bail must follow in every NDPS prosecution irrespective of the statutory constraints under Section 37. The judgment in ***Vigin K. Varghese*** makes it abundantly clear that, in cases involving commercial quantity, the Court must first satisfy itself on the statutory twin conditions before granting bail, and that reliance solely on factors such as long custody, anticipated delay, absence of antecedents or arguable defences regarding knowledge is legally unsustainable.

53. When the factual matrix of the present case is examined against that legal backdrop, the decisions cited on behalf of the petitioner do not advance his cause. The sheer quantity and nature of the contraband, the prosecution's reliance on the Section 67 statement and associated material, the active progress of the trial, and the petitioner's status as a foreign national collectively place this case on a different footing. The general observations regarding liberty and the rule of bail cannot, therefore, be used to neutralise the specific legislative policy embodied in Section 37 of the NDPS Act in the facts at hand.

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54. In view of the discussion above, this Court is unable to hold that the petitioner has satisfied the twin requirements under Section 37 of the NDPS Act. On the material presently available, it cannot be said that there are reasonable grounds for believing that he is not guilty of the offences alleged, nor can it be said that he is not likely to commit any offence or evade the process of law if released on bail. The statutory embargo under Section 37, therefore, continues to operate against the grant of bail in this case.

55. At the same time, since the petitioner remains in judicial custody and the trial is already underway, it is expected that the learned Trial Court shall make an endeavour to expedite the proceedings and conclude the trial as expeditiously as possible, in accordance with law.

56. Nothing stated in this judgment shall be construed as an expression of opinion on the merits of the case, which shall proceed strictly in accordance with law.

57. In view of the aforesaid discussion, the present bail application is dismissed in the above terms.

58. Pending application(s), if any, also stand dismissed.

59. The judgment be uploaded on the website forthwith.

AJAY DIGPAUL, J.

NOVEMBER 20, 2025/gs/*yr*

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