



2025:DHC:8422



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

*Reserved on: 08.09.2025*  
*Date of Decision: 22.09.2025*

+ BAIL APPLN. 1425/2025

AJARAOGO GOOD LUCK .....Petitioner

Through: Mr. Arun K Srivastva,  
Mr. Ashish Sindhu, Ms. Shahina Praveen,  
Adv.

versus

STATE GOVT OF NCT OF DELHI THROUGH SHO

.....Respondent

Through: Ms. Meenakshi Dahiya, APP  
for State

**CORAM:**  
**HON'BLE MR. JUSTICE AJAY DIGPAUL**

**J U D G M E N T**

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1. The present application is the second bail application filed by the petitioner seeking regular bail in FIR No. 189/2023, registered at Police Station Malviya Nagar, under Sections 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985<sup>1</sup> and Section 14 Foreigners Act, 1946.

2. Briefly stated, the case of the prosecution is that on 12.04.2023, on the basis of secret information, a raiding team of the Narcotics Squad, South District was constituted and deployed near Qila Satpula

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<sup>1</sup>Hereinafter "NDPS Act"



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Lake, Khirki Village, Malviya Nagar, New Delhi. At about 01:25 PM, the petitioner, a Nigerian national, was apprehended. After compliance with Section 50 NDPS Act, his personal search was conducted in the presence of the ACP/Operations, wherein 65.5 grams of a crystal-like substance was recovered from his possession. The substance, on field testing, was found to be MDMA (Amphetamine). As the petitioner failed to produce valid travel documents, the recovered contraband was seized in accordance with law, rukka was prepared, and the present FIR was registered, culminating in the arrest of the petitioner. Samples were subsequently drawn before the learned Metropolitan Magistrate under Section 52A NDPS Act.

3. The seized substance was thereafter sent to FSL, and the report confirmed it to be Amphetamine. Upon completion of investigation, a chargesheet was filed against the petitioner under Section 22 of the NDPS act and 14 of the Foreigners Act.

4. The petitioner had moved Bail Application no. 422/25 before learned ASJ, Special Judge-NDPS, South, Saket Courts, which was dismissed on the ground that the recovered quantity falls within the commercial category, thereby attracting the rigours of Section 37 NDPS Act, the Court further observed that any alleged discrepancies in the testimony of witnesses are matters for trial and do not justify grant of bail at this stage.

5. In the present application, it is urged on behalf of the petitioner as follows:

- i. That the petitioner has been in custody since 12.04.2023 and is innocent, having been falsely implicated



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on the basis of a fabricated story containing material discrepancies. The search and seizure proceedings were not conducted in accordance with Section 50 NDPS Act, and no independent public witness was joined.

ii. That the mandatory procedure under Section 52A NDPS Act was not properly followed, as the representative samples were not drawn at the spot on 12.04.2023, but only on 19.04.2023 before the learned Metropolitan Magistrate, and the same were sent to FSL only on 25.04.2023, thereby creating a possibility of tampering.

iii. The petitioner has been in custody for over 24 months, is not required for further investigation, and the trial is likely to take considerable time. He has no prior convictions, no other case is pending against him, and there is no likelihood of him fleeing or repeating the offence. He undertakes to cooperate with the prosecution and abide by any conditions imposed by this Court if released.

6. *Per contra*, learned APP for the State, relying upon the Status Report, has submitted that the petitioner was duly apprised of his rights under Section 50 NDPS Act and was served with a notice in this regard. His search was thereafter conducted, and 65.5 grams of crystal-like material was recovered from his right pocket. On field testing, the substance was found to be Amphetamine. The contraband was duly sealed with the seal of “R.S” and was marked as “SN-01”.



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7. It is further submitted that the chargesheet has already been filed, the FSL report confirms the contraband as Amphetamine, and four public witnesses have been examined to date. It is urged that if released on bail, there is every possibility that the petitioner may abscond and not be available to face trial.

8. Submissions heard.

9. The counsel for the petitioner has sought to argue that search and seizure of the petitioner was not conducted in presence of independent witness, which is not in consonance with the mandatory provisions of NDPS Act, especially Section 50.

10. Before proceeding further in the matter, Section 50 of the NDPS Act, being a pivotal provision, is extracted hereinbelow:

**“50. Conditions under which search of persons shall be conducted.—**

(1) When any officer duly authorised under section 42 is about to search any person under the provisions of section 41, section 42 or section 43, he shall, if such person so requires, take such person without unnecessary delay to the nearest Gazette Officer of any of the departments mentioned in section 42 or to the nearest Magistrate.

(2) If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in subsection (1).

(3) The Gazette Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.

(4) No female shall be searched by anyone excepting a female.

(5) When an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility



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of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazette Officer or Magistrate, proceed to search the person as provided under section 100 of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within seventy-two hours send a copy thereof to his immediate official superior.”

**11.** Compliance with this safeguard is mandatory, and failure to adhere to it would vitiate the search, as held by the Hon’ble Supreme Court in *Vijaysinh Chandubha Jadeja v. State of Gujarat*<sup>2</sup>.

**12.** In the present case, the record reflects that though 3-4 passersby were requested to join the proceedings, they declined citing personal compulsions, and consequently no independent witness was available. The petitioner was, however, served with a written notice under Section 50 NDPS Act, which clearly apprised him of his right to be searched before a Gazetted Officer or a Magistrate. The petitioner, after acknowledging the notice and signing the same, recorded in writing that he did not wish to exercise the said right.

**13.** The absence of independent witnesses, by itself, does not vitiate the proceedings at this stage. The question as to whether the requirements of Section 50 NDPS Act were duly complied with is essentially a matter for trial, as held in *Vijaysinh Chandubha Jadeja (supra)*. The Court cannot, at the stage of bail, conclusively determine compliance without affording the prosecution an opportunity to establish the same through evidence.

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<sup>2</sup> (2011) 1 SCC 609



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14. Accordingly, it stands established for the present purposes that the petitioner was duly informed of his rights under Section 50 and had expressly declined the option. The validity of such compliance shall, however, be adjudicated during trial.

15. The petitioner has sought to argue that there has been non-compliance with the provisions of Section 52A of the NDPS Act, inasmuch as the samples were not drawn at the spot on 12.04.2023 but were drawn subsequently on 19.04.2023 before the learned Metropolitan Magistrate, and thereafter sent to the FSL on 25.04.2023, thereby raising the possibility of tampering with the case property.

16. The Hon'ble Supreme Court, however, in *Narcotics Control Bureau v. Kashif*<sup>3</sup> has clarified the position in law in the following terms:

“23. As demonstrated above, sub-section (2) of Section 52A specifies the procedure as contemplated in sub-section (1) thereof, for the disposal of the seized contraband or controlled narcotic drugs and psychotropic substances. Any deviation or delay in making the application under subsection (2) by the concerned officer to the Magistrate or the delay on the part of the Magistrate in deciding such application could at the most be termed as an irregularity and not an illegality which would nullify or vitiate the entire case of the prosecution. The jurisprudence as developed by the courts so far, makes clear distinction between an “irregular proceeding” and an “illegal proceeding.” While an irregularity can be remedied, an illegality cannot be. An irregularity may be overlooked or corrected without affecting the outcome, whereas an illegality may lead to nullification of the proceedings. Any breach of procedure of rule or regulation which may indicate a lapse in procedure, may be considered as an irregularity, and would not affect the outcome of legal proceedings but it can not be termed as an illegality leading to the nullification of the proceedings.”

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<sup>3</sup> [2024 INSC 1045]



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17. In the case at hand, the seizure was effected on 12.04.2023, and the Investigating Officer moved an application under Section 52A on 15.04.2023. The proceedings before the learned Magistrate were concluded on 19.04.2023, and the samples were forwarded to the FSL without any undue delay on 25.04.2023. In these circumstances, no reasonable delay can be said to have occurred either in conducting the sampling under Section 52A or in forwarding the samples to the laboratory.

18. The process of drawing samples is required to be carried out in the presence of and under the supervision of the Magistrate. It therefore cannot be held that non-compliance or delayed compliance of the procedure prescribed under Section 52A(2) NDPS Act would vitiate the proceedings or by itself entitle the accused to the grant of bail. Reliance in this regard is placed on *Union of India v. Mohanlal & Anr.*<sup>4</sup>

19. To reiterate, as recorded by the Hon'ble Supreme Court in *Narcotics Control Bureau v. Kashif (supra)*:

“39.(iv) Sub-section (2) of Section 52A lays down the procedure as contemplated in sub-section (1) thereof, and any lapse or delayed compliance thereof would be merely a procedural irregularity which would neither entitle the accused to be released on bail nor would vitiate the trial on that ground alone.

(vi) Any lapse or delay in compliance of Section 52A by itself would neither vitiate the trial nor would entitle the accused to be released on bail. The Court will have to consider other circumstances and the other primary evidence collected during the course of investigation, as also the statutory presumption permissible under Section 54 of the NDPS Act.”

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<sup>4</sup> (2016) 3 SCC 376



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20. In the present case, it stands established that a seizure memo was prepared at the spot and the case property was sealed with the seal “R.S.” affixed by SI Narender. The seal was thereafter handed over to HC Sanjay, thereby ensuring compliance with the requirement of safe custody. The seal remained intact, and the sealed parcel was produced before the learned Metropolitan Magistrate. Sampling under Section 52A NDPS Act was conducted in court before the learned Metropolitan Magistrate on 19.04.2023. At that stage, the case property was weighed 66.2 grams, two samples were duly drawn, and the remaining substance was resealed with the seal of the Magistrate, i.e., “K” wax seal. Therefore, *prima facie*, no infraction of Section 52A is made out at this stage, and the issue, in any event, remains a matter for trial.

21. Furthermore, it is of significance that the recovered contraband falls within the ambit of commercial quantity thereby attracting the rigours of Section 37 NDPS Act.

22. Section 37 NDPS Act imposes strict limitations on the grant of bail, in addition to those provided ordinarily under the Act. The conditions are twofold: first, the Public Prosecutor must be given an opportunity to oppose the application; and second, the Court must be satisfied that there are reasonable grounds to believe that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. These twin conditions, as consistently reiterated by the Hon’ble Supreme Court including in *Collector of*



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*Customs v. Ahmadalieva Nodira*<sup>5</sup> are mandatory in nature and must be scrupulously satisfied before any order of bail can be considered in cases involving commercial quantity.

23. In the present case, the recovery of 65.5 grams of Amphetamine, a psychotropic substance, constitutes commercial quantity as notified under the NDPS Act. Thus, the statutory embargo contained in Section 37 squarely applies.

24. Having regard to the nature of recovery, the statutory mandate under Section 37 NDPS Act, the stage of the trial where material witnesses are yet to be examined, and the absence of any circumstance on record to *prima facie* satisfy this Court that the petitioner is not guilty of the alleged offence, the prayer for bail does not merit acceptance.

25. It is to note that the petitioner is a foreign national who has been residing in India without valid passport/travel documents. In such circumstances, there exists a substantial risk of the petitioner absconding or evading the course of justice if released on bail.

26. This, therefore, leads to the inevitable conclusion that the present bail application is dismissed, along with pending application(s), if any.

27. At this stage, it is clarified that this Court has not expressed opinion on the merit of the case.

**AJAY DIGPAUL, J.**

**SEPTEMBER 22, 2025/gs/dd**

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<sup>5</sup> (2004) 3 SCC 549