



2026:DHC:9309



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

***Reserved on 14.10.2026
Pronounced on 16.10.2026
Uploaded on: 16.10.2026.***

CNR No. DLHC010033792026

+ **BAIL APPLN. 459/2026 & CRL.M.A. 3493/2026**

NDULU LUKULUNGU HERITIER Petitioner

Through: **Mr. Aniruddha Singh Rajavat, Mr.
Maneesh Bhardwaj, Advocates.**

versus

CUSTOMS Respondent

Through: **Mr. Shubham Tyagi, SSC with Ms.
Navruti Ojha, Advocates for the
Respondent in Item No.2.**

**CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN**

J U D G M E N T

1. By way of the present bail application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023, the petitioner seeks regular bail in connection with File/C. No. VIII(AP)(10)P&I/3453-D/Arrival/2022 registered under Sections 8/21/23/28 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ["NDPS Act"], at Police Station Customs, IGI Airport, Delhi.

2. I have heard Mr. Aniruddha Singh Rajavat, learned counsel for the petitioner, and Mr. Shubham Tyagi, learned Standing Counsel for the respondent.



2026:DHC:9309



3. This petition was heard alongwith BAIL APPLN. 4650/2025 and BAIL APPLN. 516/2026, which arise in similar circumstances. However, separate judgments are being delivered in each of the three petitions.

4. The prosecution has placed on record a reply dated 23.03.2026 and handed over written submissions dated 02.09.2026, which is taken on record.

A. PROSECUTION CASE

5. The prosecution case, as emerging from the material on record, is as follows:

- a. The petitioner, who is a Congolese (Democratic Republic) national, arrived at Terminal-3, IGI Airport, New Delhi from Ethiopia on 25.04.2022.
- b. On the basis of suspicion, the petitioner was intercepted by the Customs authorities while passing through the Green Channel. His baggage was scanned, and he was also asked to pass through the Door Frame Metal Detector. However, nothing suspicious was detected at that stage.
- c. The petitioner was thereafter taken to the Customs Preventive Room at International Arrival Hall of T-3, IGI Airport, for further verification. Notices under Section 102 of the Customs Act, 1962 [“the Customs Act”], and Section 50 of the NDPS Act were served upon him.
- d. Pursuant to the aforesaid notices, the petitioner’s personal and baggage search was conducted before a Gazetted Customs Officer and two independent witnesses. However, no incriminating article was recovered during the said search.



2026:DHC:9309



- e. As the conduct of the petitioner remained suspicious, further enquiry was conducted, and the petitioner voluntarily stated that he had ingested some pellets/capsules containing narcotics. Consequently, he was served with a notice under Section 103 of the Customs Act. He also agreed to undergo procedure for removal of the said pellets/capsules. The petitioner was accordingly taken to RML Hospital on 25.04.2022 itself.
- f. The petitioner was admitted on 25.04.2022. During his stay, i.e. between 25.04.2022. to 07.05.2022, the petitioner excreted the capsules. The capsules were recovered under separate panchnamas, the details of which are enumerated below:

PANCHNAMA	DATE AND TIMING OF PANCHNAMA	DETENTI ON RECEIPT ["DR"] No.	NO. OF CAPSULES RECOVERED	PANCHNA MA OFFICER	PANCH WITNESSES
Panchnama 2 at RML Hospital	25.04.2022 at 08:10 PM	DR No. 68793	29	Sachin Bhati, ACO	Dharmender and Amit Rohilla
Panchnama 3 at RML Hospital	26.04.2022 at 06:00 AM	DR No. 68794	12	Mukesh Bharadwaj, ACS	Mahipal Singh and Rakesh
Panchnama 4 at RML Hospital	26.04.2022 at 07:00 PM	DR No. 68795	19	Sujeet Kumar, ACO	Ritu and Dharmender
Panchnama 5 at RML Hospital	27.04.2022 at 01:30 AM	DR No. 68796	10	Sunil Pratap Suman, ACS	Mahipal Singh and Puran Chand
Panchnama 6 at RML Hospital	01.05.2022 at 07:30 PM	DR No. 68797	01	Ashish Semwal, ACO	Dharmender and Ritu

- g. At the time of each recovery, the capsules were kept in a plastic container and sealed with Customs pliers seal having 'Customs PD



2026:DHC:9309



IGI' marking on one side and 'Ashoka Stambh' on the other. During the intervening period, the custody of the petitioner, and the recovered substance, remained with the respondent authorities, as evidenced by the handing-over memos dated 25.04.2022 to 07.05.2022. The custody of aforesaid was handed over from one officer to another on 21 occasions during the said period.

- h. On 07.05.2022, the petitioner was discharged from RML Hospital and taken to IGI Airport. On 08.05.2022, independent panch witnesses [namely Mohd. Aziz Ansari and Suman] were called and shown the five sealed containers, who found the seal and signatures on the DR slip affixed to the containers intact.
- i. Thereafter, all 71 capsules, which were kept in five different plastic containers, were opened in the presence of independent panch witnesses and the petitioner. Each of the 71 capsules was cut open with a blade, and found to contain white powdery substance. A small quantity was taken from each of the 71 capsules, and tested separately using the field drug testing kit, and found to be positive for *cocaine*.
- j. Thereafter, the contents of the capsules in each of the five sets were mixed together and kept in five different transparent polythene pouches. The packing material of the capsules was preserved separately. The net weight of the substance recovered was approximately 1198 grams.
- k. Thereafter, the five pouches were kept in a plastic container stitched in cloth and marked 'X'. The cloth marked 'X' was sealed with a Customs preventive seal bearing "IGI AIRPORT



2026:DHC:9309



CUSTOMS NEW DELHI T-3 AIRPORT OPEN D”, after completion of procedural formalities. This was seized *vide* DR No. 68798 and was deposited in the *malkhana*.

- l. Panchnama-7 dated 08.05.2022 was prepared in respect of the aforesaid proceedings.
 - m. The petitioner was ultimately arrested on 08.05.2022. An intimation of his arrest was communicated to the Ministry of External Affairs, New Delhi and the Embassy of Democratic Republic of Congo.
 - n. Subsequently, the petitioner tendered his voluntary statement on 08.05.2022 under Section 67 of the NDPS Act, where he *inter alia* admitted the possession, recovery and attempt to import narcotic substances.
 - o. On 31.05.2022, an application under Section 52A of the NDPS Act for sampling and disposal of the case property, was placed before the Magistrate’s Court. Samples were drawn and the panchnama dated 08.05.2022, relating to recovery from the petitioner, was verified to the effect that the particulars, sealing, weight, and color of the case property was correct.
 - p. The samples were thereafter sent to CRCL and *vide* report dated 27.09.2022, tested positive for *cocaine*.
 - q. On 23.03.2023, charges were framed against the petitioner under Sections 21(c)/23(c) of the NDPS Act.
6. Nominal Roll furnished by the jail authorities shows that the petitioner was in custody for 3 years, 10 months, and 6 days, as of



13.03.2026. He has thus now been in custody for over 4 years and 5 months.

B. RELEVANT PROVISIONS

7. The statutory provisions in the NDPS Act referred to by learned counsel for the parties in the course of their arguments are set out below:

“37. Offences to be cognizable and non-bailable.—

(1)Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)—

(a)every offence punishable under this Act shall be cognizable;

(b)no person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless—

(i)the Public Prosecutor has been given an opportunity to oppose the application for such release, and

*(ii)where the Public Prosecutor opposes the application, **the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.***

(2)The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.

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52. Disposal of persons arrested and articles seized.—

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(2) Every person arrested and article seized under warrant issued under sub-section (1) of section 41 shall be forwarded without unnecessary delay to the Magistrate by whom the warrant was issued.

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52-A. Disposal of seized narcotic drugs and psychotropic substances.—*[(1) The Central Government may, having regard to the hazardous nature, vulnerability to theft, substitution, constraint of proper storage space or any other relevant consideration, in respect of*



any narcotic drugs, psychotropic substances, controlled substances or conveyances, by notification in the Official Gazette, specify such narcotic drugs, psychotropic substances, controlled substances or conveyance or class of narcotic drugs, class of psychotropic substances, class of controlled substances or conveyances, **which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may, from time to time, determine after following the procedure hereinafter specified.**

(2) **Where any [narcotic drugs, psychotropic substances, controlled substances or conveyances] has been seized** and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under Section 53, **the officer** referred to in sub-section (1) **shall prepare an inventory of such [narcotic drugs, psychotropic substances, controlled substances or conveyances]** containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the [narcotic drugs, psychotropic substances, controlled substances or conveyances] or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-section (1) may consider relevant to the identity of the [narcotic drugs, psychotropic substances, controlled substances or conveyances] in any proceedings under this Act and **make an application, to any Magistrate for the purpose of—**

(a) certifying the correctness of the inventory so prepared; or

(b) taking, in the presence of such Magistrate, photographs of [such drugs, substances or conveyances] and certifying such photographs as true; or

(c) **allowing to draw representative samples** of such drugs or substances, in the presence of such Magistrate and certifying the correctness of any list of samples so drawn.

(3) **Where an application is made under sub-section (2), the Magistrate shall, as soon as may be, allow the application.**

(4) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872) or the Code of Criminal Procedure, 1973 (2 of 1974), every court trying an offence under this Act, shall treat the inventory, the photographs of [narcotic drugs, psychotropic substances, controlled substances or conveyances] and any list of samples drawn under sub-section (2) and certified by the Magistrate, as primary evidence in respect of such offence.]”¹

¹Emphasis supplied.



8. The relevant rules of Standing Order No. 1/89 dated 13.06.1989 [hereinafter, “the Standing Order”], relied upon by learned counsel for the parties, are set out below for ease of reference:

“Sampling Classification, Etc. of drugs

2.1 All drugs shall be properly classified, carefully weighed and sampled on the spot of seizure.

Drawal of Samples

2.2 All the packages/containers shall be serially numbered and kept in lots for sampling. Samples from the narcotic drugs and psychotropic substances seized, shall be drawn on the spot of recovery, in duplicate, in the presence of search witnesses (Panchas) and the person from whose possession the drug is recovered, and a mention to this effect should invariably be made in the panchnama drawn on the spot.

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Method of Drawal

2.4 In the case of seizure of a single package/container, one sample in duplicate shall be drawn. **Normally, it is advisable to draw one sample (in duplicate) from each package/container in case of seizure of more than one package/container.**

2.5 However, **when the packages/containers seized together are of identical size and weight, bearing identical markings and the contents of each package given identical results on colour test by the drug identification kit, conclusively indicating that the packages/containers are identical in all respects except in the case of ganja and hashish (charas), where it may be bunched in lots of 40. Such packages/containers, one sample (in duplicate) may be drawn.**

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Storage of samples – procedure

2.9 **The sample in duplicate should be kept in heat sealed plastic bags as it is convenient and safe.** The plastic bag container should be kept in a paper envelope which may be sealed properly. Such sealed envelope may be marked as original and duplicate. Both the envelopes should also bear the S.No. of the package(s)/container(s) from which the sample has been drawn. The duplicate envelope containing the sample will also have a reference of the test memo. The seals should be legible. This envelope along with test memo should be kept in another



envelope which should also be sealed and marked “secret-drug sample/Test memo”, to be sent to the chemical laboratory concerned.

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Maintenance of godowns and procedure for deposit of Drugs

3.3 Such godowns, as a matter of rule, shall be placed under the overall supervision and charge of a Gazetted Officer of the respective enforcement agency, who shall exercise utmost care, circumspection and personal supervision as far as possible. Each seizing officer shall deposit the drugs fully packed and sealed in the godowns within 48 hours of such seizure, with a forwarding memo indicating NDPE Crime No. as per Crime and Prosecution (C & P Register) under the new law, name of the accused, reference of test memo, description of the drugs, total number of packages/containers, etc.’²

C. SUBMISSIONS BY LEARNED COUNSEL FOR PARTIES

9. In the bail application, the petitioner has taken the point that his arrest, in fact, took place on 25.04.2022 when he was apprehended at IGI Airport and not on 08.05.2022, when he was formally arrested. It has been argued, relying upon judgments of this Court in *Habiob Bedru Omer v. Customs*³, *Kitoko Ngiembo Alain v. Customs*⁴, and *Maria Nuemia Albertina v. Customs*⁵, that his arrest was illegal as he was not produced before a Magistrate within 24 hours, but only on 08.05.2022. However, in view of apparently conflicting authorities of this Court on this point, in *Christina Katushabe Ayebale v. Customs*⁶, *Lydia Kabukazi Aloyo v. Customs*⁷, and *Joshua Kuteesa v. Customs*⁸, Mr. Rajavat, in the course of hearing, gave up this point, rather than seeking reference to a larger Bench for the purpose of resolving the conflict.

²Emphasis supplied.

³ 2025 SCC OnLine Del 4263.

⁴ BAIL APPLN. 3428/2025, decided on 16.02.2026.

⁵ BAIL APPLN. 4689/2025, decided on 17.03.2026.

⁶ BAIL APPLN. 4890/2025, decided on 17.12.2025.

⁷ BAIL APPLN. 1429/2025, decided on 24.12.2025.

⁸ BAIL APPLN. 1757/2025, decided on 06.04.2026.



10. The principal submissions advanced by Mr. Rajavat are that the sanctity of the seizure stands vitiated on account of non-compliance with the procedure prescribed under the NDPS Act and the Standing Order, and on account of the petitioner's pre-trial incarceration, without likelihood of expeditious conclusion of proceedings.

11. In support of the first argument, Mr. Rajavat submits as follows:

- a. The present prosecution is founded upon five separate recoveries made between 25.04.2022 and 01.05.2022, in respect of which separate panchnamas were drawn. Mr. Rajavat submits that the said panchnamas neither record the classification or weight of the seized contraband, nor reflect any sampling having been carried out, in violation of paragraph 2.1 of the Standing Order. To this effect, he places reliance on a judgment of the Rajasthan High Court in *Kuka Ram v. State of Rajasthan*.⁹
- b. He further draws my attention to the formal seizure memo dated 08.05.2022 and the five panchnamas recorded at the time of recovery, to submit that the formal seizure was not carried out in the presence of the panch witnesses who had witnessed the respective recoveries, contrary to the requirement under paragraph 2.2 of the Standing Order. It is further submitted that, in an attempt to cure this defect, the petitioner himself was made to identify the recovered contraband at the time of sampling on 08.05.2022, which, according to Mr. Rajavat, is impermissible and violative of the constitutional safeguards available to the petitioner.

⁹ 2024 SCC OnLine Raj 3705 [hereinafter, "*Kuka Ram*"].



2026:DHC:9309



- c. In the present case, following the field testing on 08.05.2022, which indicated the presence of *cocaine*, the contents of the capsules recovered in each of the five separate recoveries, were mixed together and thereafter placed in five separate pouches. Samples were ultimately drawn only on 31.05.2022, pursuant to the order passed by the Magistrate's Court on the application under Section 52A of the NDPS Act. Mr. Rajavat submits that this procedure is contrary to paragraph 2.4 of the Standing Order, which contemplates the drawing of representative samples separately from each seized package/container. According to him, the mixing of the contents of the five separate recoveries prior to the drawing of representative samples was impermissible and vitiated the sampling procedure. He places reliance on judgments of this Court in *Amani Fidel Chris v. Narcotics Control Bureau*¹⁰, *Amina v. State NCT of Delhi*¹¹, and *Betty Rame v. NCB*¹².
- d. Despite the recoveries having been effected between 25.04.2022 and 01.05.2022, the seized contraband was deposited in the godown only on 08.05.2022. The seized contraband admittedly remained in the custody of Customs officials during the intervening period. Mr. Rajavat submits that there was, therefore, a delay of approximately seven to thirteen days in depositing the seized contraband in the godown, contrary to paragraph 3.3 of the Standing Order, which requires the seized drugs to be deposited in the godown within 48 hours of seizure.

¹⁰2020 SCC OnLine Del 2080 [hereinafter, "*Amani Fidel Chris*"].

¹¹ 2023 SCC OnLine Del 3491 [hereinafter, "*Amina*"].

¹²CRL.M.(BAIL) 1324/2022 IN CRL.A. 338/2021, decided on 30.05.2023[hereinafter, "*Betty Rame*"].



e. Mr. Rajavat further points out that, although field testing of the seized contraband was conducted on 08.05.2022, formal sampling was carried out only on 31.05.2022 before the Magistrate's Court, resulting in a delay of over three weeks. He submits that such delay in complying with the procedure contemplated under Section 52A of the NDPS Act creates a reasonable doubt in the prosecution case, thereby entitling the petitioner to bail.

12. Lastly, Mr. Rajavat submits that the petitioner has been incarcerated for a period of over 4 years and 5 months, while only 13 out of 42 witnesses have been examined so far. The trial is, therefore, likely to take considerable time to conclude, leading to an apprehension of prolonged pre-trial incarceration, contrary to Article 21 of the Constitution.

13. Mr. Tyagi, on the other hand, submits that the present case involves recovery of 1198 grams of *cocaine*, which is far in excess of the threshold for commercial quantity [100 grams]. He therefore submits that the twin conditions for grant of bail under Section 37 of the NDPS Act come into play, and the petitioner fails to satisfy these conditions, in the facts of this case.

14. Mr. Tyagi submits that the contention with regard to violation of the Standing Order, as urged by Mr. Rajavat, is also insufficient for grant of bail in the present case. He submits, relying upon the judgments of the Supreme Court in *Mohd. Muslim v. State (NCT of Delhi)*¹³, *Narcotics Control Bureau v. Kashif*¹⁴, and *Bharat Aambale v. State of*

¹³2023 SCC OnLine SC 352, [hereinafter, "*Mohd. Muslim*"].

¹⁴(2024) 11 SCC 372, [hereinafter, "*Kashif*"].



*Chhattisgarh*¹⁵ that the respondent is not required to demonstrate scrupulous and meticulous compliance with the Standing Order, and that it is for the accused to show substantial non-compliance and resultant prejudice, in order to defeat the prosecution case. Mr. Tyagi urges the Court to reserve these issues for trial upon evidence, rather than to undertake a mini trial at the stage of an application for bail.

15. On the specifics of the present case, Mr. Tyagi submits that the capsules containing the contraband, were sealed at the time of recovery and each of the containers were affixed with a DR slip and a seal. The seizure procedure was conducted by way of a single seizure after medical assurance that all the ingested capsules have been recovered. He submits that the DR slips and seals affixed at the time of recovery of the capsules were found to be intact at the time of seizure, and that fresh seals were affixed at the time of seizure, after which the contraband was sent to the *malkhana*. At the time of sampling before the Magistrate, the seals placed at the time of seizure were found to be intact. Mr. Tyagi, therefore submits that the entire chain of custody remained unbroken, and there was no opportunity for tampering or contamination of the contraband in the interregnum. In such circumstances, he submits that there was substantial compliance with the procedure required, so as to negate even a *prima facie* case on the threshold of Section 37 of the NDPS Act.

16. Mr. Tyagi also disputed the petitioner's entitlement to bail on account of prolonged incarceration. He drew my attention to a recent judgment of the Supreme Court in *State of Punjab v. Sukhwinder Singh*¹⁶,

¹⁵(2025) 8 SCC 452, [hereinafter, "*Bharat Aambale*"].

¹⁶2026 SCC Online SC 671, [hereinafter, "*Sukhwinder Singh*"].



which clearly lays down that the requirements of Section 37 of the NDPS Act are not eclipsed by length of incarceration.

17. Mr. Rajavat, in rejoinder, disputes Mr. Tyagi's argument with regard to an unbroken chain of custody on two grounds:

- a. That the DR slip affixed on the container is merely a piece of paper, without any authenticating or unique characteristics, so as to render it impossible to tamper or replace.
- b. That the seals affixed upon the containers at the time of recovery at the hospital were not sent for forensic examination, contrary to the requirement of paragraph 2.9 of the Standing Order.

18. Learned counsel on both sides also relied upon several other authorities, to which I will refer to in the course of judgment.

D. ANALYSIS

19. At the very outset, it may be noted that the subject complaint concerns recovery of commercial quantity of *cocaine* [more than 100 grams] and therefore attracts the twin restrictions on grant of bail, as laid down in Section 37 of the NDPS Act.

20. Before examining the merits of the matter, so as to adjudicate the satisfaction of these conditions, some judgments of the Supreme Court dealing with prolonged incarceration, in cases under the NDPS Act, and other similar statutes, must be considered. Several statutory provisions incorporate similar (although not always identical) restrictions on the grant of bail, for example Section 43D(5) of the Unlawful Activities (Prevention) Act, 1967 ["UAPA"], Section 21(4) of the Maharashtra Control of Organised Crime Act, 1999, and Section 45 of the Prevention of Money Laundering Act, 2002.



21. Several decisions of the Supreme Court have emphasized the inter-play between the statutory scheme and the constitutional right to pre-trial life and liberty. Some of those decisions are noticed below:

a. In the context of UAPA, the Court in *Union of India v. K.A. Najeeb*¹⁷ opined as follows:

“15. This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In *Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India* [Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India, (1994) 6 SCC 731, para 15 : 1995 SCC (Cri) 39] , it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, the courts are tasked with deciding whether an individual ought to be released pending trial or not. **Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.**

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17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. **Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence.** Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.”¹⁸

¹⁷(2021) 3 SCC 713, [hereinafter, “K.A. Najeeb”].

¹⁸Emphasis supplied.



2026:DHC:9309



- b. *K.A. Najeeb* was applied, in the context of the NDPS Act, *inter alia* in *Mohd. Muslim*. The Court therein also stipulated that Section 37 NDPS Act requires a *prima facie* consideration, based upon reasonable assessment of the material on record, and not a finding beyond reasonable doubt at the stage of bail.
- c. In several other orders also, the Supreme Court has granted bail to accused in cases involving commercial quantities under the NDPS Act, on the ground of period of custody. Some of the said orders are tabulated in the following chart:

Sr. No.	CASE NO.	CAUSE TITLE	DATE OF ORDER / JUDGMENT	PERIOD OF INCARCERATION
1.	SLP (Crl.) No. 8900/2022	<i>Jitendra Jain v. Narcotics Control Bureau and Anr.</i>	16.12.2022	2 years
2.	SLP (Crl.) No. 6690/2022	<i>Dheeraj Kumar Shukla v. State of U.P.</i>	25.01.2023	2 and a half years
3.	SLP (Crl.) No. 4169/2023	<i>Rabi Prakash v. State of Odisha</i>	13.07.2023	More than 3 and a half years
4.	SLP (Crl.) No. 975/2023	<i>Badsha SK. v. The State of West Bengal</i>	13.09.2023	More than 2 years
5.	SLP (Crl.) No. 8656/2023	<i>Man Mandal and Anr. v. The State of West Bengal</i>	14.09.2023	Almost 2 years
6.	SLP (Crl.) No. 14347/2023	<i>Rased Mia v. The State of West Bengal</i>	24.01.2024	1 year and 6 months
7.	SLP (Crl.) No. 14415/2023	<i>Suman Sk. @ Samirul Islam v. The State of West Bengal</i>	01.03.2024	Not mentioned



2026:DHC:9309



Sr. No.	Case No.	Cause Title	Date of Order / Judgment	Period of Incarceration
8.	SLP (Crl.) No. 14974/2025	Deepchand v. State of Rajasthan	26.11.2025	More than 3 years

d. As against this line of authority, Mr. Tyagi drew my attention to the following observations in Sukhwinder Singh:

“9. It is well settled that in matters involving recovery of contraband in commercial quantity, **the twin conditions under Section 37(1)(b)(ii) of the NDPS Act are mandatory and entail no relaxation merely on the ground that the accused has undergone prolonged incarceration during the pendency of trial.** The provision casts upon the court a duty to record, before enlarging an accused on bail, its satisfaction on two cumulative conditions, first, that there exist reasonable grounds for believing that the accused is not guilty of the offence charged; and second, that he is not likely to commit any offence while on bail. **The recording of such satisfaction is not a mere formality but a mandatory precondition, the non-observance of which vitiates the grant of bail.** This Court, in Kashif [Narcotics Control Bureau v. Kashif, (2024) 11 SCC 372 : (2025) 3 SCC (Cri) 377] , has held in no uncertain terms that the recording of satisfaction on the twin conditions under Section 37 is mandatory and not merely directory, and that an order granting bail without such recorded satisfaction stands vitiated and cannot be sustained. The same view stands reiterated in Lalrintluanga Sailo [State of Meghalaya v. Lalrintluanga Sailo, (2024) 15 SCC 36 : (2026) 1 SCC (Cri) N-23] .

10. **The impugned order** [Sukhwinder Singh v. State of Punjab, 2026 SCC OnLine P&H 6788] , **on its own showing, does not record the satisfaction mandated under Section 37(1)(b)(ii) of the NDPS Act.** Far from recording such satisfaction, the High Court has gone on to observe that “the rigours of Section 37 of the NDPS Act can be diluted bearing in mind the right to a speedy trial”. Such an approach is plainly contrary to the settled law laid down by this Court and deserves to be set aside on this ground alone.

11. **The right to speedy trial, rooted in Article 21 of the Constitution, is undoubtedly a precious constitutional right. That said, in matters governed by a special enactment such as the NDPS Act, particularly where the recovery is of commercial quantity, the said right under Article 21 must be exercised within the framework of Section 37 and cannot be pressed into service solely on the ground of delay to override**



it. The constitutional right under Article 21 and the special provision of law under Section 37 of the NDPS Act are to be read harmoniously and not placed in opposition to each other. The High Court, by failing to record its satisfaction on the twin conditions under Section 37, has in this Court's view, committed an error.”¹⁹

e. I may also note that in the context of prolonged custody under the UAPA, a bench of two learned judges of the Supreme Court has referred the question of interplay between the constitutional safeguard of life and liberty at the pre-trial stage, and the statutory restrictions of grant of bail, to a larger Bench²⁰.

22. Having regard to the above, for the present, in the context of the NDPS Act, I am of the view that the Court is required to consider both, the period of pre-trial incarceration and satisfaction of Section 37 of NDPS Act. Neither the constitutional right nor the statutory regime can be considered in isolation, ignoring the other; the Court must be mindful of both while adjudicating a bail application.

23. In the present case, the petitioner has now been in custody for a period of over 4 years and 5 months. This is undoubtedly a substantial period. While the maximum period of imprisonment for the offence in question is 20 years, the prosecution has only examined 13 out of 42 witnesses. With 29 witnesses still to testify, the likelihood of prolonged proceedings cannot be brushed aside.

24. I am conscious that a detailed decision on merits at the stage of bail is not warranted. However, the twin conditions incorporated in the

¹⁹Emphasis supplied.

²⁰ The Court had considered the question in *Gulfisha Fatima v. State (Govt. of NCT of Delhi)* [2026 SCC OnLine SC 10], which was doubted by a subsequent pronouncement in *Syed Itikhar Andrabi v. National Investigation Agency* [2026 SCC OnLine SC 881]. The question was therefore referred to a larger Bench in *Tasleem Ahmed v. State (NCT of Delhi)* [2026 SCC OnLine SC 1707].



statute, as explained in *Mohd. Muslim* and *Sukhwinder Singh*, make a *prima facie* determination essential. The following discussion is intended only for that purpose, and not to influence the ultimate adjudication on evidence.

25. In the context of the NDPS Act and the Standing Order, the following discrepancies in the procedure adopted by the respondent, lend credence to the petitioner's case:

- a. No classification, weighing, sampling or testing at the point of recovery: Paragraph 2.1 of the Standing Order provides for classification and weighing at the spot of seizure. No such procedure was undertaken at the hospital at the time of recovery of each of the five lots of contraband. Mr. Rajavat relied upon the judgment of the Rajasthan High Court in *Kuka Ram*, which ascribes vital importance to this procedural safeguard. The High Court, in fact, granted bail to an accused on this account. Mr. Tyagi, however, submitted that the Supreme Court in *Khet Singh v. Union of India*²¹ and in *State of Punjab v. Makhan Chand*²² permitted such a procedure. In *Khet Singh*, however, the seizure occurred on a roadside and the Court held that the seizure *mahazar* could be prepared at a later stage, as there were no facilities for seizure of the contraband at the spot. Emphasis was placed on recording justifiable and reasonable grounds for such delay and it was noted that inordinate delay in preparing the seizure *mahazar* would itself give an opportunity for tampering. This was followed

²¹(2002) 4 SCC 380, [hereinafter, "*Khet Singh*"].

²²(2004) 3 SCC 453, [hereinafter, "*Makhan Chand*"].



2026:DHC:9309



in *Makhan Chand*, which was again a case of recovery on the roadside. The Court again noticed that the facilities for weighing at the spot of recovery was not available. In the present case, in contrast, the recovery took place in a hospital setting, where the facilities for field testing and weighing could, in my *prima facie* view, have been provided.

- b. Discrepancies in the chain of custody: The capsules were recovered between 25.04.2022 to 01.05.2022. The petitioner was discharged from the hospital on 07.05.2022, whereas the formal seizure of the recovered contraband and the petitioner's arrest were effected only on 08.05.2022. At the time of each recovery, the recovered capsules were kept in a container, affixed with a DR slip and sealed with the Customs plier seal, with the marking 'Customs PD IGI' on one side and 'Ashoka Stambh' on the other. During the intervening period, the sealed containers and the custody of the petitioner was transferred from one officer to another on as many as 21 occasions. It also appears that the seal, which is general in nature, was handed over to the next officer to enable him to carry out sealing of any further recoveries, if required. Thus, the recovered capsules and the seals remained in the custody of Customs Officers throughout this period, and were in the custody of the same person at any given point of time. In these circumstances, the chain of custody cannot be said to adequately safeguard against the possibility of tampering or contamination. Further, the sample seals affixed to the containers at the time of recovery at the hospital were not sent for forensic examination,



contrary to the procedure contemplated under paragraph 2.9 of the Standing Order and the judgment of the Supreme Court in *Noor Aga v. State of Punjab & Anr.*²³. In *Noor Aga*, the Supreme Court observed that where the seal was not deposited in the *malkhana*, the sanctity of the recovery could not be said to have been adequately safeguarded. In the present case, the absence of forensic examination of the seals assumes greater significance, particularly in view of the multiple transfers of custody. Accordingly, these circumstances give rise to a *prima facie* doubt regarding the chain of custody.

- c. Formal seizure in front of different witnesses: The capsules were recovered between 08:10 PM on 25.04.2022 and 07:30 PM on 01.05.2022. However, even assuming that they were not required to be seized at the time of recovery, the formal seizure did not occur until 08.05.2022. The final seizure was also not in the presence of any of the panch witnesses at the time of recovery, but a completely new set of witnesses.
- d. Delay in depositing contraband in malkhana: The recovered contraband was not sent to the *malkhana* during this time, but was handed over from one Customs officer to the other, as evidenced by handing over memos. Paragraph 3.3 of the Standing Order requires the drugs to be deposited and sealed in the godown within 48 hours of seizure. In the present case, the contraband was, in fact, deposited in the *malkhana* seven to thirteen days after recovery.

²³(2008) 16 SCC 417 [hereinafter, “*Noor Aga*”].



e. Delay in sampling under Section 52A NDPS Act: Another significant delay has occurred in the present case between seizure on 08.05.2022 and sampling before the Magistrate on 31.05.2022. The delay of over three weeks has not been explained at all.

26. With regard to the testing and sampling procedure, Mr. Rajavat argued that mixing of the contents of all the capsules from each lot was impermissible, relying upon paragraph 2.4 of the Standing Order, and judgments of this Court in *Amani Fidel Chris*, *Amina*, and *Betty Rame*. However, Mr. Tyagi submitted that mixing of the contents of the capsules in each lot was permitted by paragraph 2.5 of the Standing Order, as reproduced above. Having regard to paragraph 2.5 of the Standing Order and the fact that the capsules were all apparently identical, I do not consider it appropriate to render a *prima facie* finding in favour of the petitioner on this point at this stage, but leave it open to trial on evidence.

27. In two of the judgments cited by Mr. Tyagi – *Kashif and Bharat Aambale* – the Supreme Court has emphasized that procedural violations in NDPS cases ought not to be standalone grounds for acquittal or grant of bail. The judgment in *Noor Aga* cited by Mr. Rajavat, in contrast, correlated sanctity of the physical evidence with substantial compliance of the Standing Order, failing which adverse inference would have to be drawn against the prosecution. The case concerned holding of samples at the airport for a period of three days without depositing in the *malkhana*, which was construed as a lacuna in the prosecution case.



28. Mr. Tyagi emphasized that the judgments in *Khet Singh*, *Makhan Chand*, *Noor Aga*, as well as *Kashif*, were all considered by the Supreme Court in *Bharat Aambale* and the following principles were laid down:

“29. Non-compliance or delayed compliance with the procedure prescribed under Section 52-A of the NDPS Act or the Rules/Standing Order(s) thereunder may lead the court to draw an adverse inference against the prosecution. However, no hard-and-fast rule can be laid down as to when such inference may be drawn, and it would all depend on the peculiar facts and circumstances of each case. Such delay or deviation from Section 52-A of the NDPS Act or the Standing Order(s)/Rules thereunder will not, by itself, be fatal to the case of the prosecution, unless there are discrepancies in the physical evidence which may not have been there had such compliance been done. **What is required is that the courts take a holistic and cumulative view of the discrepancies that exist** in the physical evidence adduced by the prosecution and correlate or link the same with any procedural lapses or deviations. Thus, whenever, there is any deviation or non-compliance of the procedure envisaged under Section 52-A, the courts are required to appreciate the same keeping in mind the discrepancies that exist in the prosecution's case. **In such instances of procedural error or deficiency, the courts ought to be extra-careful and must not overlook or brush aside the discrepancies lightly and rather should scrutinise the material on record even more stringently to satisfy itself of the aspects of possession, seizure or recovery of such material in the first place.**

30. In such circumstances, particularly where there has been lapse on the part of the police in either following the procedure laid down in Section 52-A of the NDPS Act or the prosecution in adequately proving compliance of the same, it would not be appropriate for the courts to resort to the statutory presumption of commission of an offence from the possession of illicit material under Section 54 of the NDPS Act, unless the court is otherwise satisfied as regards the seizure or recovery of such material from the accused persons from the other material on record. Similarly, irrespective of any failure to follow the procedure laid under Section 52-A of the NDPS Act, if the other material on record adduced by the prosecution inspires confidence and satisfies the court regarding both the recovery and possession of the contraband from the accused, then even in such cases, the courts can without hesitation proceed for conviction notwithstanding any procedural defect in terms of Section 52-A of the NDPS Act.

XXX

XXX

XXX



33. Thus, from above it is clear that the procedure prescribed by the Standing Order(s)/Rules in terms of Section 52-A of the NDPS Act is only intended to guide the officers and to ensure that a fair procedure is adopted by the officer in charge of the investigation, and as such what is required is substantial compliance of the procedure laid therein.

33.1. We say so because, due to varying circumstances, there may be situations wherein it may not always be possible to forward the seized contraband immediately for the purpose of sampling. This could be due to various factors, such as the sheer volume of the contraband, the peculiar nature of the place of seizure, or owing to the volatility of the substance so seized that may warrant slow and safe handling. There could be situations where such contraband after being sampled cannot be preserved due to its hazardous nature and must be destroyed forthwith or vice-versa where the nature of the case demands that they are preserved and remain untouched. Due to such multitude of possibilities or situations, neither can the police be realistically expected to rigidly adhere to the procedure laid down in Section 52-A or its allied Rules/Orders, nor can a straitjacket formula be applied for insisting compliance of each procedure in a specified timeline to the letter, due to varying situations or requirements of each case.

33.2. Thus, what is actually required is only a substantial compliance of the procedure laid down under Section 52-A of the NDPS Act and the Standing Order(s)/Rules framed thereunder, and any discrepancy or deviation in the same may lead the court to draw an adverse inference against the police as per the facts of each and every case.

xxx

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38. Even in cases where there is non-compliance with the procedural requirements of Section 52-A, it does not necessarily vitiate the trial or warrant an automatic acquittal. The courts have consistently held that procedural lapses must be viewed in the context of the overall evidence. If the prosecution can otherwise establish the chain of custody, corroborate the seizure with credible testimony, and prove its case beyond reasonable doubt, the mere non-compliance with Section 52-A may not be fatal. The emphasis must be on substantive justice rather than procedural technicalities, and keeping in mind that the salutary objective of the NDPS Act is to curb the menace of drug trafficking.²⁴

29. Bharat Aambale, thus, itself recognizes the importance of the Standing Orders and the requirement of a higher threshold of scrutiny in

²⁴Emphasis supplied.



cases of violation of the Standing Orders, although treating them as “guidance”, rather than mandatory. The issue is to be decided on the touchstone of substantial compliance.

30. Looking at the material on record in this perspective, I am *prima facie* of the view that the discrepancies discussed in paragraph 25 above, preclude a finding of substantial compliance with the NDPS Act and the Standing Order, at this stage. Mr. Tyagi’s submission with regard to the chain of custody must, in these circumstances, be established by the prosecution at the time of trial, and the accused is entitled to the benefit of doubt at this stage. It bears reiteration that, consistent with *Mohd. Muslim*, the Court’s task at this stage is a *prima facie* assessment. The petitioner also has no other criminal antecedents. On this standard, I am of the view that the petitioner has made out the requirement of Section 37 of the NDPS Act and is not liable for continued pre-trial incarceration, particularly in the context of over 4 years and 5 months custody already undergone, with little prospect that the trial can be concluded expeditiously.

31. The petitioner, as noted above, is a citizen of Democratic Republic of Congo. His release must therefore be guided by strict conditions, including as to the requirement of sureties. These principles having recently been explained by the Supreme Court in *Union of India v. Chidiebere Kingsley Nawchara*²⁵.

E. CONCLUSION

32. Having regard to the aforesaid, it is therefore directed that the petitioner will be released on bail in connection with File/C. No.

²⁵2026 SCC OnLine SC 1585 [hereinafter, “*Chidiebere Kingsley Nawchara*”].



2026:DHC:9309



VIII(AP)(10)P&I/3453-D/Arrival/2022, registered at Police Station Customs, IGI Airport, Delhi, subject to furnishing a personal bond in the sum of Rs.1,00,000/-, with two sureties in the like amount, to the satisfaction of the Special Court/Duty Magistrate and the following further conditions:

- a) The sureties be verified by the Special Court prior to release, in terms of *Chidiebere Kingsley Nawchara*.
- b) A lien/charge equal to the amount of the surety bond be created on their property in any form, including immovable property.
- c) The petitioner shall appear before the Special Court on each date of hearing;
- d) The petitioner shall furnish his mobile number to the concerned IO/Station House Officer, and shall ensure that the same remains operational at all times. The mobile number shall not be switched off or changed without prior intimation to the IO during the pendency of the trial;
- e) The petitioner shall furnish his permanent address to the Special Court, as also the address at which he shall reside during the pendency of the case. In the event of any change in his residential address, the petitioner shall intimate the Investigating Officer [“IO”] and file an affidavit to that effect before the Special Court. The address be verified in accordance with *Chidiebere Kingsley Nawchara*, prior to the petitioner’s release;
- f) The petitioner shall surrender his passport, if any, before the Special Court;
- g) The petitioner shall not leave the country without the prior



permission of the Special Court;

- h) 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 any manner whatsoever;
- i) The petitioner shall not commit any offence during the period of his release on bail.
- j) The petitioner shall file an affidavit indicating his source of income/funds within India, and also give details of all bank accounts, if any, in the country, before the Special Court;
- k) In terms of the judgment of the Supreme Court in *Frank Vitus v. Narcotics Control Bureau and Ors.*²⁶, the State shall immediately communicate the order granting bail, to the concerned Foreign Registration Officer appointed under Rule 3 of the Registration of Foreigners Rules, 1992, who in turn, shall communicate the order to all concerned authorities including civil authorities in order to enable them to take appropriate steps under the Foreigners Act, 1946, the Registration of Foreigners Rules, 1992, and Foreigners Order, 1948, in accordance with law;
- l) The petitioner shall register with the Foreigners Regional Registration Office within one week of release, and inform the Investigating Officer [“IO”], in writing, of having made such registration;
- m) The IO is directed to inform the Embassy of Democratic Republic of Congo of the petitioner’s involvement in the aforesaid case.

²⁶ (2025) 3 SCC 1.



2026:DHC:9309



33. The bail application, alongwith pending application, is disposed of in terms of the above.

34. It is clarified that any observations made in the present order 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 on the merits of the case.

35. Copy of the order be communicated to the concerned Jail Superintendent electronically for information and necessary compliance.

PRATEEK JALAN, J

OCTOBER 16, 2026

SS/SM/AD/

Signature Not Verified

Signed By: PARUL
VASHIST
Signing Date: 16.10.2026
19:24

BAIL APPLN. 459/2026

Page 28 of 28