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

Reserved on: 29th October, 2026
Pronounced on: 2nd November, 2026
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\# **CNR No. DLHC010383242026**

\+ BAIL APPLN. 3387/2026

JOHN SERUWU .....Petitioner

Through: Mr. Meghan and Mr. Mukul Gupta, Advocates.

versus

CUSTOMS .....Respondent

Through: Mr. Vishal Chadha, SSC with Mr. Chandan Kumar, Adv.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J.:

1. The Applicant, a Ugandan national, seeks regular bail in SC No. 786/2022, arising out of proceedings registered under Customs File No. VIII(AP)10/P&I/3406-D/Arrival/2022, in which he is facing trial for the offences punishable under Sections 21(c) and 23(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 ["NDPS Act"].

2. According to the prosecution, the Applicant arrived at IGI Airport, New Delhi, from Addis Ababa on 5th April, 2022. Upon interception by Customs officials, he allegedly disclosed that he had ingested capsules containing narcotic substances. Six capsules were recovered at the airport, following which he was taken to Dr. Ram Manohar Lohia Hospital, where another 79 capsules were recovered. The substance recovered from the 85 capsules was found to be cocaine weighing approximately 1,088 grams, constituting commercial quantity. The Applicant was formally arrested on

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10th April, 2022. The prosecution complaint was filed on 6th October, 2022, and charges were framed on 17th March, 2023.

3. Counsel for the Applicant submits that the Applicant has remained in custody since 10th April, 2022, although the trial is nowhere near completion. It is urged that his continued detention, without any realistic prospect of an early conclusion of the trial, violates Article 21 of the Constitution. The Applicant also questions the legality of his detention between 5th and 10th April, 2022, particularly when six capsules had already been recovered at the airport. He further points out alleged irregularities in the sealing, handling and preservation of the recovered substance, as well as the delay in initiating proceedings under Section 52A NDPS Act. The Applicant also asserts that he has clean antecedents.

4. Customs opposes bail, emphasising the commercial quantity of cocaine allegedly recovered from the Applicant's body. It maintains that the search, recovery and seizure proceedings were duly documented. It further submits that the Applicant remained in hospital under medical supervision for completion of the recovery process and to ensure his safety. Customs disputes the allegations of procedural irregularities. It also relies on the restrictions imposed by Section 37 NDPS Act and contends that the Applicant, being a foreign national residing in Uganda without established roots in India, presents a risk of absconding.

5. The Court has considered the aforenoted contentions and the record. The principal consideration in the present case is the Applicant's prolonged incarceration and the slow progress of trial. The right to speedy trial is an integral and essential part of the fundamental right to life and liberty under Article 21 of the Constitution. In ***Mohd. Muslim @ Hussain v. State (NCT***

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of Delhi)[1], the Supreme Court examined this constitutional guarantee in the context of the restrictions imposed by Section 37 NDPS Act. It clarified that the grant of bail on the ground of undue delay in trial cannot be said to be fettered by Section 37 NDPS Act. In ***Rabi Prakash v. State of Odisha***[2], the Supreme Court granted bail to an accused who had remained in custody for more than three-and-a-half years, with only 1 of the 19 witnesses examined. After noting the prolonged incarceration and the slow progress of trial, the Court observed that such incarceration generally militates against the fundamental right guaranteed under Article 21 and that, in such situations, conditional liberty must override the statutory embargo under Section 37(1)(b)(ii) NDPS Act.

6. The Supreme Court has applied this approach in its subsequent orders. In ***Ankur Chaudhary v. State of Madhya Pradesh***[3], the Court granted bail after more than two years of custody, taking into account the panch witnesses' failure to support the prosecution case. It observed that prolonged incarceration resulting from failure to conclude trial within a reasonable time militates against Article 21 and conditional liberty overriding the statutory embargo under Section 37 NDPS Act may be considered in such circumstances. Then, in ***Rijesh Ravindran v. Union of India***[4], bail was granted after more than four years of custody, having regard to the absence of antecedents and the lack of progress in trial. Similarly, in ***Vijay Singh v. Union of India***[5], the Supreme Court granted bail where the accused had remained in custody for over four years and only two prosecution witnesses

[1] (2023) 18 SCC 166.
[2] 2023 SCC OnLine SC 1109.
[3] 2024 SCC OnLine SC 2730.
[4] SLP (Crl.) No. 12109/2024, decided on 19th November, 2024.

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had been examined. In ***Ranjan Kare v. State of Chhattisgarh***[6], bail was granted after more than four years of incarceration, taking into account the absence of criminal antecedents. More recently, in ***Chintan Rajubhai Panseriya v. State of Maharashtra***[7], the Supreme Court granted bail after approximately three-and-a-half years of custody, noting that the examination of 159 proposed witnesses would take considerable time. In ***Reginamary Chellamani v. State Rep by Superintendent of Customs***[8], involving a commercial quantity of contraband, bail was granted after four years, one month and twenty-eight days of custody, with parity also weighing in favour of the accused. While these decisions turn upon their respective facts, they reflect the consistent judicial concern that prolonged pre-trial incarceration cannot be allowed to continue without regard to the progress of proceedings.

7. In the present case, the Applicant has remained in custody since 10th April, 2022 and has undergone more than 4 years and 6 months of incarceration. His Nominal Roll records satisfactory jail conduct, with no other pending criminal case or conviction. Although charges were framed on 17th March, 2023, only 6 prosecution witnesses have been examined. While the Customs' records contain differing figures for the total number of witnesses, its counsel confirms that 33 witnesses have been cited. The trial is, therefore, far from completion. The Trial Court has recorded that the Applicant failed to cross-examine PW-1 despite an opportunity being granted. That lapse is relevant, but does not, by itself, explain the overall delay. The Applicant has already spent a considerable period in custody

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[5] SLP (Crl.) Diary No. 43071/2024, decided on 3rd December, 2024.
[6] SLP (Crl.) No. 15748/2024, decided on 14th February, 2025.
[7] SLP (Crl.) No. 439/2026, decided on 28th January, 2026.
[8] 2026 SCC OnLine SC 151.

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without a determination of his guilt, and his continued detention for an uncertain period raises a serious concern under Article 21.

8. The Court is conscious, however, that the alleged recovery involves commercial quantity of cocaine and that the statutory restrictions under Section 37 NDPS Act must be addressed. In ***State of Punjab v. Sukhwinder Singh @ Gora***[9], the Supreme Court emphasized that the twin conditions under Section 37(1)(b)(ii) NDPS Act are mandatory and that prolonged incarceration, by itself, does not dispense with the requirement of recording satisfaction on those conditions. There, the accused had remained in custody for 2 years, 1 month and 2 days, with only 2 of the 24 prosecution witnesses examined. The Court nevertheless set aside the bail order, as the High Court had not recorded its satisfaction under Section 37. This decision re-affirms the mandatory character of Section 37 but arose in circumstances materially different from the present case.

9. The position has also since been considered by the Supreme Court in ***Union of India v. Chidiebere Kingsley Nawchara***[10]. After referring to the decisions governing bail under the NDPS Act, including *Sukhwinder Singh*, the Supreme Court observed that Article 21 considerations remain, but cannot be considered independent of the statutory rigours. It further held that special statutes cannot become vehicles of indefinite detention, while emphasising that the constitutional guarantee of personal liberty and the statutory restrictions must be considered in harmony. The present application must, therefore, be examined on its own facts, including the prosecution material, the period of incarceration and the progress of trial.

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[9] (2026) 7 SCC 513.
[10] 2026 SCC OnLine SC 1585.

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10. The prosecution case rests upon the alleged recovery of 1,088 grams of cocaine from capsules ingested by the Applicant. The contemporaneous seizure documents and the laboratory report constitute substantial incriminating material. There are, however, certain aspects of the evidence already recorded which raise questions concerning the handling and preservation of the recovered substance. PW-4 acknowledged discrepancies in the description of the seal and the absence of corresponding particulars in the handing-over records. He also admitted that the capsules were placed in a container by a Havaldar whose involvement was not recorded in the panchnamas, and that the case property had been kept in a drawer without an attempt to deposit it promptly in the Malkhana. The capsules in the containers were cut open on 9th April, 2022, while samples under Section 52A NDPS Act were drawn only on 5th August, 2022. Customs relies upon the contemporaneous records, the condition of the seals and the laboratory findings to establish the integrity of the recovery. These circumstances cannot be disregarded. Equally, the questions arising from the handling and preservation of the recovered material, particularly concerning the continuity of its custody, cannot be dismissed as inconsequential. On a broad and provisional assessment, these circumstances furnish reasonable grounds for a *prima facie* belief that the Applicant may not be guilty of the offences charged, for the limited purpose of Section 37(1)(b)(ii) NDPS Act. This assessment does not rest merely upon the period of custody, nor does it determine the ultimate evidentiary worth of the recovery proceedings, which remains to be examined at trial.

11. The second requirement under Section 37 also stands satisfied. The Nominal Roll records no other pending criminal case or conviction against

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the Applicant, and his conduct in custody has remained satisfactory. No material has been placed on record indicating that he is likely to commit an offence while on bail. His foreign nationality and the absence of established residential ties in India raise a legitimate concern regarding his availability for trial. That concern, however, can be addressed through appropriate safeguards, including verification of his residence and sureties, surrender of his passport, restrictions on travel and compliance with the applicable immigration requirements. The Supreme Court in *Chidiebere Kingsley Nawchara* has recognised that foreign nationals enjoy the protection of Article 21, while permitting additional safeguards to secure their presence.

12. The bail application is, accordingly, allowed. The Applicant shall be released on regular bail upon furnishing a personal bond in the sum of INR 50,000/- with two sureties of the like amount, to the satisfaction of the Trial Court/Duty MM, subject to the following conditions:

a. Before his release, the Applicant shall furnish his complete and verifiable residential address in Delhi, along with his contact particulars. He shall reside at the said address during the pendency of the trial and shall not change his residence without prior permission of the Trial Court. The investigating agency shall physically verify the address within three days of its disclosure and place the verification report before the Trial Court prior to his release.

b. The Applicant shall furnish sureties in accordance with *Chidiebere Kingsley Nawchara*. The identity, address and financial capacity of the sureties shall be verified in accordance with the procedure contemplated in the said judgment. Such verification shall be completed within three days, and the verification reports shall be placed before the Trial Court prior to the

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Applicant's release. A lien or charge equal to the amount of each surety bond shall be created over the property furnished by the respective surety. If, despite sufficient efforts, the Applicant is unable to arrange two sureties, the Trial Court may relax this requirement by a written order recording reasons.

c. The Applicant shall deposit his passport, including any expired passport in his possession, with the Trial Court before his release. If the passport is already in the custody of any authority, the IO shall ensure that it is placed before the Trial Court. If the Applicant does not possess or is unable to produce his passport, he shall disclose the circumstances and its whereabouts, if known, by way of an affidavit. He shall not leave India without prior permission of the Trial Court.

d. The Applicant shall register with the Foreigners Regional Registration Office ["FRRO"] within one week of his release and communicate such registration in writing to the IO and the Trial Court.

e. The Applicant shall not leave the National Capital Region without prior permission of the Trial Court. He shall mark his presence once every month at the police station having jurisdiction over his verified place of residence, at a time specified by the officer in charge.

f. The Applicant shall furnish an operational Indian mobile number to the IO and the Trial Court within one week of his release. He shall keep the number active and accessible at all times. Any change in the number or other contact particulars shall be promptly communicated to the IO and the Trial Court.

g. The Applicant shall appear before the Trial Court on every date of hearing, unless exempted.

h. The Applicant shall, within one week of his release, file an affidavit

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before the Trial Court disclosing his source of income or funds in India and the particulars of all bank accounts, if any, maintained by him in the country.

i. The IO shall, through written communication, inform the High Commission of Uganda of the Applicant's involvement in the present case and his release on bail. A copy of this order shall also be forwarded to the concerned FRRO and immigration authorities for information and necessary action, if any, in accordance with law.

13. The Trial Court shall ensure compliance with the applicable directions in *Chidiebere Kingsley Nawchara* while accepting the bail bonds and verifying the sureties. Any breach of the conditions imposed herein shall entitle Customs to seek cancellation of bail, in accordance with law. The Trial Court shall endeavour to conclude the proceedings expeditiously. Both sides shall extend their cooperation in that regard.

14. The *prima facie* observations made in this order are confined to the consideration of the present bail application and shall not influence the determination of the case on merits.

15. The bail application stands disposed of, along with any other pending application.

16. Copy of this order be communicated to the Trial Court and the concerned Jail Superintendent, for necessary information and compliance.

SANJEEV NARULA, J

NOVEMBER 02, 2026/ab

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