

IA/3/26 S.C 187/21
NCB V/S JASCENT NAKALUNGI

18.03.2026

Present: Sh. Mukeysh Malik, Ld. SPP for NCB.
None for applicant/accused.

Vide my separate order of even date, the application filed on behalf of the applicant/accused Jascent Nakalungi, seeking grant of regular bail is dismissed and disposed of accordingly.

Copy of the order be given *dasti* as well as be sent to jail superintendent for supplying the same to accused in jail.

(Jitendra Pratap Singh)
ASJ NDPS Act
(Special Judge)/PHC
NDD/18.03.2026

**IN THE COURT OF JITENDRA PRATAP SINGH
ADDL. SESSIONS JUDGE /SPECIAL JUDGE (NDPS),
NEW DELHI DISTRICT, PATIALA HOUSE COURTS,
NEW DELHI**

**IA/3/26 S.C 187/21
NCB V/S JASCENT NAKALUNGI
18.03.2026**

ORDER

1. Vide this order, I shall decide the third application moved on behalf of accused/applicant Jascent Nakalungi under Section 483 BNSS, 2023 corresponding to Section 439 Cr.P.C. seeking grant of regular bail.

2. It is submitted by Ld. Counsel for applicant/accused and affirmed by the IO that there is no other bail application preferred by the present applicant/accused which is pending disposal before the Hon'ble Supreme Court of India, before the Hon'ble High Court of Delhi, or any other Court in the present case FIR.

3. The case of the prosecution, in brief, is that on the basis of secret information received on 27.01.2021, the present applicant and co-accused Sharifah Namaganda, both Ugandan nationals, were intercepted at Terminal-3, IGI Airport, New Delhi, in the early hours of 28.01.2021. It is the case of the prosecution that from the sky-blue trolley bag of the present applicant, 4 kg heroin and 560 grams cocaine were recovered, while from the baggage of co-accused Sharifah Namaganda, 4 kg heroin and 510 grams cocaine were recovered. It is further the case of the prosecution that during the follow-up proceedings at Pastry Place, Vikaspuri, one Kingsley, who had allegedly come to

receive the baggage containing contraband, was also apprehended. Charge-sheet has since been filed and charges under Sections 21(c), 22(c) read with Section 29 NDPS Act have already been framed.

4. Learned counsel for the applicant has sought bail primarily on the grounds that the applicant is in custody since 28.01.2021 and has thus undergone almost five years of incarceration; that the trial is proceeding slowly. That the applicant is entitled to the benefit of the judgment in Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India & Ors., (1994) 6 SCC 731. That prolonged incarceration would justify grant of bail in terms of Ankur Chaudhary v. State of Madhya Pradesh, MANU/SC/0820/2024 and Moussa Zie v. State (NCT of Delhi), Bail Appln. No. 3533/2022, decided on 07.02.2024. It is submitted that the custody of the accused is illegal as he was not produced within the 24 hours of his arrest before the concerned Magistrate and that the applicant remained in illegal custody before being produced before the Court. Reliance in this regard is placed on the decisions titled Directorate of Enforcement v. Subhash Sharma, MANU/SC/0135/2025, Iqbal Kaur Kwatra v. Director General of Police, Rajasthan State, Jaipur, 1996 Cri LJ 2600, and Biswajit Mandal v. Inspector, Narcotic Control Bureau, MANU/KE/2529/2025. It has also been argued that CCTV footage of the alleged place of apprehension/recovery of the contraband was not collected, proceedings were not audio-videographed and the contraband was mixed before sampling in violation of Standing Order No. 1/88 and 1/89.

5. Per contra, learned SPP for NCB has opposed the application and submitted that the present case involves direct recovery of commercial quantity from the baggage of the applicant herself and as such rigours of Section 37 NDPS Act are fully attracted. There is prima facie material to show concert and conspiracy. That the applicant is a foreign national and there is every likelihood of her absconding if released on bail and that the grounds now urged are substantially the same as those which already stood considered and rejected by the Hon'ble High Court of Delhi while dismissing the earlier bail application of the applicant vide order dated 04.11.2025 in Jascent Nakalungi v. Narcotic Control Bureau, Bail Appln. No. 1367/2025.

6. I have given my thoughtful consideration to the rival submissions.

7. At the outset, it needs to be noted that the recovery attributed to the present applicant is of 4 kg heroin and 560 grams cocaine from her own baggage. Thus, the case pertains to recovery of commercial quantity, and therefore, the embargo under Section 37 NDPS Act is straightaway attracted. Once Section 37 applies, bail cannot be granted on ordinary considerations alone. The Court must be satisfied that there are reasonable grounds for believing that the accused is not guilty of the offence alleged and that she is not likely to commit any offence while on bail. The said satisfaction is not a matter of form. It is a substantive statutory requirement.

8. In the present case, such satisfaction cannot be recorded. The allegations against the applicant are grave and specific. It is not a case of mere disclosure statement or remote association. The prosecution case is of direct recovery from the baggage carried by the applicant herself at the international airport. The prosecution further alleges that the contraband was to be delivered at Pastry Place, Vikaspuri and that the intended receiver, namely Kingsley, was also apprehended in the course of the same transaction. The prosecution further relies upon travel documents and other material to show that the applicant and co-accused were acting in concert. At this stage, these circumstances do disclose a prima facie case of conscious possession and conspiracy. Therefore, this Court is unable to hold that there are reasonable grounds for believing that the applicant is not guilty.

9. The second limb of Section 37 also requires the Court to be satisfied that the accused is not likely to commit any offence while on bail. In the facts of the present case, such satisfaction cannot be recorded at this stage. The allegations against the applicant are of serious nature involving international trafficking of narcotic drugs through air travel. The prosecution case reflects that the applicant was carrying commercial quantity of contraband and was allegedly acting in concert with co-accused persons for delivery of the narcotic substance within India. In such circumstances, and particularly keeping in view that the applicant is a foreign national, this Court cannot safely conclude that there is no likelihood of the applicant indulging in similar

activities or otherwise frustrating the course of justice if released on bail. Be that as it may, once the Court is unable to record the first satisfaction mandated by Section 37, namely that there are reasonable grounds for believing that the accused is not guilty, the statutory bar to grant of bail continues to operate with full force.

10. The plea of long incarceration has been pressed with emphasis. There can be no quarrel with the proposition that prolonged incarceration is an important factor and that the right to speedy trial is part of Article 21 of the Constitution. However, in the facts of the present case, the said argument does not persuade this Court to enlarge the applicant on bail. The judgment in Supreme Court Legal Aid Committee v. Union of India & Ors., (Supra) was rendered in the backdrop of an extraordinary situation of systemic delay in NDPS trials. The said judgment cannot be read as laying down that on completion of five years of custody every undertrial under the NDPS Act becomes entitled to bail as a matter of right irrespective of the facts of the case and irrespective of the embargo under Section 37. The same stands approved in view of observations of the Hon'ble Supreme Court of India in paragraph no. 16 of the said judgment.

11. Similarly, Moussa Zie v. State (NCT of Delhi) (Supra) was a bail order rendered in its own factual matrix. In the respectful opinion of this Court, the said decision rendered in its own facts cannot be treated as a precedent requiring grant of bail in every

case of a foreign national who has undergone long custody. Likewise, *Ankur Chaudhary v. State of Madhya Pradesh*, MANU/SC/0820/2024 reiterates that prolonged incarceration may, in an appropriate case, justify grant of bail despite statutory restrictions. However, even that principle has to be applied keeping in view the nature of accusation, the quantity involved, the stage of trial and the overall facts of the case. In the present matter, having regard to the direct recovery of very large commercial quantity from the applicant's baggage, the allegation of organised trafficking and the continued applicability of Section 37, mere passage of time by itself cannot be treated as sufficient to override the statutory bar.

12. It is also of significance that the earlier bail application of the present applicant was dismissed by the Hon'ble High Court of Delhi vide order dated 04.11.2025 in *Jascent Nakalungi v. Narcotic Control Bureau*, Bail Appln. No. 1367/2025. The Hon'ble High Court had already considered the gravity of the accusation, the quantity recovered, the plea of long incarceration, the alleged infirmities in investigation and the risk factors attendant upon release of the applicant. No such substantial or fundamental change in circumstance is shown before this Court as would justify taking a view different from the one already taken by the Hon'ble High Court, except that some more time has elapsed in custody. That by itself, in the peculiar facts of the present case, is not sufficient.

13. The argument regarding illegal custody also does not

advance the case of the applicant at this stage. In Directorate of Enforcement v. Subhash Sharma (Supra), the Hon'ble Supreme Court was dealing with a case where the factual position regarding prior custody and delayed production before the Magistrate was borne out from the record. The said decision turned on its own facts. The same is true of Biswajit Mandal v. Inspector, Narcotic Control Bureau (Supra) and Iqbal Kaur Kwatra v. Director General of Police (Supra). In the present matter, the prosecution case is that the applicant was intercepted, search and seizure proceedings were conducted and she was thereafter formally arrested and produced before the Court in accordance with law. Whether the period between interception and formal arrest amounted to illegal custody in the constitutional sense is a matter which would require evidence and cannot be conclusively determined in favour of the applicant at this stage so as to dilute the rigours of Section 37. More so when it is not disputed that the regular custody of the accused has since been sanctioned from time to time by judicial orders.

14. The remaining submissions regarding non-collection of CCTV footage, absence of audio-videography and alleged mixing of the contraband before sampling are also matters which pertain to appreciation of evidence and trial. At this stage, those aspects do not demolish the prosecution case so thoroughly as to enable this Court to record a satisfaction that the applicant is not guilty. These are defences available to the applicant during trial, but they do not furnish a valid ground for grant of bail in the teeth of Section 37.

15. Thus, considering the totality of the facts and circumstances, the nature and gravity of the accusation, the direct recovery of commercial quantity from the baggage of the applicant, the prima facie material regarding conspiracy, the status of the applicant as a foreign national and the statutory embargo contained in Section 37 NDPS Act, this Court does not find any ground to enlarge the applicant on bail.

16. Consequently, the present bail application stands dismissed.

17. Nothing stated herein shall be construed as an expression on the merits of the case at the stage of trial.

18. The coversheet in compliance of the practice directions no. 124/Rules/DHC dated 10.12.2024, containing the directions passed by the Hon'ble Supreme Court of India in "***Suhas Chakma Vs. Union of India & Ors.***", Neutral Citation 2024 INSC 813 is issued separately.

19. Application is disposed of accordingly. Copy of the present order be given *dasti* and same be also sent to concerned jail superintendent, to be supplied to the applicant/accused.

(Jitendra Pratap Singh)
ASJ NDPS Act
(Special Judge)/PHC
NDD/18.03.2026