

IA 1/25 SC 276/21
NCB VS Kulwa Yohana Martine
06.10.2025

Present: Sh. Mukeysh Malik, Ld. SPP for NCB.
Sh. Rohan Gupta, Ld. Counsel for
applicant/accused.

Vide my separate order of even date, the present application is allowed and disposed off accordingly.

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

(Atul Ahlawat)
ASJ/Spl. Judge, NDPS/N. Delhi
06.10.2025

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ORDER

1. Vide this order I shall dispose off the bail application u/s 483 BNSS, 2023 moved on behalf of accused/applicant for grant of regular bail. Reply filed by the IO.

2. It is submitted by Ld. Counsel for the applicant/accused 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. It is submitted by Ld. Counsel for applicant/accused that accused/applicant was apprehended at IGI airport on 19.04.2021, the secret information was received by the NCB official regarding the arrival of the applicant/accused, who is a Tanzanian national and that he would be arriving in India from Qatar Airlines via Qatar Airlines Flight No. QR578. The said information was received on 19.04.2021 itself and as per the said information, the applicant/accused would be arriving in India carrying the contraband with him.

4. It is submitted by the Ld. Counsel for applicant/accused that the applicant/accused was suspected to be carrying contraband and when he arrived in India by flight QR578, he was kept

under the surveillance room situated at the arrival hall of IGI airport. The identity of applicant/accused was confirmed from him and upon checking her checked-in baggage, 5 kg of heroin was recovered from the secret cavity in the said trolley bag.

5. It is submitted by the Ld. Counsel for applicant/accused that although the NCB had shown his arrest to have taken place on 06.00 pm on 19.04.2021, however he was illegally detained since 19.04.2021 at 01.30 am i.e. after he was detained at the IGI airport, upon arrival in India. The applicant/accused was not produced before the Ld. JMFC within 24 hours, as contemplated under article 22 (2) of the Constitution of India, thereby rendering her detention, arrest and further custody illegal. The Ld. Counsel has relied upon the decision of Hon'ble High Court of Delhi in '**Habiob Bedru Omer Vs Customs**', Neutral Citation:2025:DHC:4870 and the decision of the Hon'ble High Court of Kerala in "**Biswajit Mandal Vs. Inspector, NCB**" MANU/KE/2529/2025.

6. It is further submitted by the Ld. Counsel for applicant/accused that the previous application moved by the applicant/accused was dismissed vide order dated 20.02.2025, however, the said application moved by the accused the ground of illegal detention was not raised by the then Ld. Counsel for the applicant/accused and the Ld. Predecessor of this Court had only dealt with the issue of delay in trial and there being no videography/photography of the seizure and there being no independent witness joined in the search and seizure proceedings.

Since the said application being dismissed, the applicant/accused has remained in further custody of over 7 months, which in itself is material changing in the circumstances. The applicant/accused is not involved in any other case and he is ready to abide with any condition that this Court may impose upon him.

7. Per contra, it is submitted by the Ld. SPP for NCB duly assisted by the IO that allegations against the applicant/accused are extremely serious and he had entered into India alongwith 5 kg of heroin in his checked-in luggage. There has been full compliance of the mandatory provisions of the law and the applicant/accused was produced before this court on 20.04.2021, after his medical examination was conducted at Safdarjung Hospital on 20.04.2021 at 02.30 pm, within 24 hours of his arrest. Furthermore, during that time, the locked down due to covid-19 pandemic was duly inforce and the delay if any in producing him for his medical was due to a curfew being imposed by DDMA vide order dated 29.05.2021 and the hospitals were full with covid – 19 patients at that time. The requirement of production before the Ld. MM within 24 hours do not apply, until the recovery of the contraband was complete. He is a foreign national and if released on bail, he may abscond from trial. Therefore, the NCB is strongly opposing the present application.

8. I have carefully perused the decision of Hon'ble High Court of Delhi in **Habiob (supra)** and **Biswajit Mandal (supra)**, wherein it has been duly held that the word 'arrest' when used in

its ordinary and natural sense means the apprehension or restraint or deprivation of once personal liberty. The question whether the person is under arrest or not, depends not only the legality of arrest, but on whether he was deprived of his personal liberty to go wherever he pleases. The period of 24 hours to produce an accused before the Magistrate commences not when the actual time of arrest recorded by the investigating agency, however, it runs from the time when the accused was effectively detained or his liberty was curtailed.

9. Applying the ratio of the decisions cited above, the applicant/accused was detained and taken into custody on 19.04.2021 at 01.30 am, upon his arrival at T-3, IGI Airport and the subsequent recoveries were made from his checked-in baggage. The NCB has shown his arrest at 06.00 p.m. on very same day i.e. after expiry of around 14½ hours from the time he was detained at the first place. Thereafter, the medical examination was got conducted after another 20 hours at Safdarjung Hospital and thereafter, he was produced before this Court. Merely because the arrest memo was prepared at a later stage, does not imply that he was not in the custody and was free to leave. He was not produced before this Court or before the Court of Ld. JMFC within 24 hours, which is mandated by article 22 (2) of The Constitution of India and also as per the provisions of CrPC. Therefore, this Court is of considered opinion that he was kept in illegal custody after the expiry of 24 hours period, till his production before this Court on 20.04.2021. Therefore, his arrest on 19.04.2021 stands vitiated. Therefore, in view of the

decision of the Hon'ble Supreme Court of India in '*ED Vs Subhash Sharma*', Neutral Citation:2025:INSC:141 and "*ED Vs. Deepak Mahajan and Anr,*" (1994) 3 SCC 440, as duly quoted by Hon'ble High Court of Delhi in *Habiob (supra)*, the rights of the applicant/accused under article 21 & 22 (2) of The Constitution of India are impinged and he has to be released on bail despite the rigors of section 37 of the Act, therefore, in the considered opinion of this court, the present applicant/accused has made out his case for grant of regular bail to him. **Hence, the applicant/accused Kulwa Yohana Martine is admitted to regular bail on following conditions :-**

- (i) On furnishing of personal bond of Rs. 1,00,000/- with two sureties of the like amount, to the satisfaction of this Court.
- (ii) He shall deposit his passport, if not already deposited/impounded and he shall not leave the country without the permission of this Court.
- (iii) He shall not try to tamper the evidence or hamper the trial or try to influence the remaining witnesses, in any manner.
- (iv) He shall furnish his present and permanent address with supporting documents along with an affidavit/undertaking to inform any change thereof without delay to the IO concerned.
- (v) He shall mark his attendance in the NCB Office, on the first Monday of each calendar month, till the trial is completed.

(vi) He shall not commit any offence, whatsoever, during the period he remains on bail in the present case.

(vii) He shall attend the trial without any single default.

(viii) He shall be released subject to production of valid passport and visa. If the visa is expired, same must be applied online from the jail and the State shall provide all necessary assistance. It is made abundantly clear that until and unless valid passport and visa is produced, he shall not be released on bail.

(ix) She shall register herself with the FRRO, within two weeks of the date of her release.

(x) He shall obtain a SIM card in his own name, on the basis of the passport and shall give the details of the number to this Court and to the IO.

(xi) He shall inform the place of residence along with valid proof and report any changes within one week, to both the Court and IO.

(xii) He shall file an affidavit within two weeks of his release on bail, stating the source of his funds and source of income in India, giving details of her bank account.

10. Nothing stated herein shall tantamount to any expression or opinion on the merits of the case.

11. The application under Section 483 BNSS, 2023 moved on behalf of applicant/accused for grant of regular bail is accordingly disposed of as allowed.

12. Needless to say, that nothing expressed herein shall have any effect on the merits of the case.

13. Copy of this order be sent to Jail Superintendent, concerned for necessary intimation to the applicant/accused.

14. Application is disposed off accordingly.

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

(Atul Ahlawat)
ASJ/Spl. Judge, NDPS/N. Delhi
06.10.2025