

IA1/25 SC305/23
CBN VS HENRY TOCHUKWU

22.12.2025

Present: Ms Pooja Bhaskar, Ld SPP for CBN.
Ms. Anshula Gupta, Ld. Counsel for
applicant/accused.
Sh. Javed Khan, Ld. Counsel for
applicant/accused through VC.

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
22.12.2025

**IN THE COURT OF ATUL AHLAWAT
ADDL. SESSIONS JUDGE, NDPS ACT (SPECIAL JUDGE)
NEW DELHI DISTRICT, PATIALA HOUSE COURTS,
NEW DELHI**

**IA1/25 SC305/23
CBN VS HENRY TOCHUKWU**

22.12.2025

ORDER

1. Vide this order I shall dispose of the 3rd 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 is in JC since 27.02.2023. The applicant/accused has been falsely implicated in the present case and there is no recovery of any contraband effected from his possession or at his instance. As per the case of the prosecution, on the basis of secret information, at the pointing out of the secret informer, the raiding team had apprehended the applicant/accused on 27.02.2023 and from his possession 17 grams of MDMA and 73 grams of suspected psychotropic substance was recovered. Thereafter, at his instance, further recovery of 200 grams of suspected psychotropic substance was

allegedly effected from his house situated at 2nd Floor, F-173 (3), near Kundan Singh School, Chattarpur Extension, New Delhi. The secret information was allegedly received at the office of CBN on 25.02.2023 at about 17:30 hours and the raiding team reached the spot at about 22:00 hours on the next day i.e. 22.02.2023 i.e. after the gap of around twenty-eight and half hours, yet no efforts were made by the IO to get the photography and videography of the search and seizure proceedings conducted. The Ld. Counsel for accused/applicant is placing reliance on the decisions of Hon'ble High Court of Delhi in '*Sukhwinder Singh Vs State*', 2024 SCC OnLine Del 4733, '*Madhuri Chauhan Vs State*', 2024 SCC OnLine Del 4735 and '*Gopal Dangi Vs State*', Neutral Citation:2024:DHC:5175.

4. It is submitted by Ld. Counsel for applicant/accused that the notice u/s 50 of the Act was defective, since, it was not mentioned that it was the legal right of the applicant/accused that he could be searched in the presence Gazetted Officer/ or nearest Magistrate. The said defect was duly mentioned in the previous order dated 21.02.2024 passed by the Ld. Predecessor of this Court, however, the bail to the applicant/accused was denied considering the further recovery of 200 grams of Etizolam from his house. The non-compliance of Section 50 of the Act is fatal to the entire case and it vitiates the entire recovery effected from his possession and no further weight can be attached to the alleged further recovery at his instance. The Ld. Counsel has placed reliance on the decision of Hon'ble Supreme Court of India in '*Mina Pun v. State of Uttar Pradesh*', Neutral Citation: 2023: INSC: 776 and decisions of Hon'ble High Court of Delhi in

‘Emeka Emmanuel v. State’, 2022 SCC OnLine 4493.

5. It is submitted by the Ld. Counsel for applicant/accused that the subsequent recovery from the house of the applicant/accused is hit due to the non-compliance of mandatory Section 41 (2) of the NDPS Act, since, the secret information was only pertaining to recovery of the contra-band from the possession of the applicant/accused and there was no mention of any contra-band being kept by the applicant/accused at his house. No authorization qua the search of the house of the applicant/accused was sought by the IO and any search conducted without the said authorization is violating the statutory mandate of Section 41 (2) of the NDPS Act. The Ld. Counsel has placed reliance on the decision of Hon'ble Supreme Court of India in ***‘Smt. Najmunisha v. The State of Gujarat & NCB’***, **Neutral Citation: 2024: INSC: 290.**

6. It is submitted by Ld. Counsel for applicant/accused that the formal charges against the applicant/accused was framed way back on 28.02.2024 and till date, only one witness out of total 09 witnesses have been examined and time and again the adjournment is being sought by the CBN for summoning the witnesses and for producing the witnesses, summoned by this Court. Since, the dismissal of the last bail application on merits, he has remained in custody for further period of about one year. The trial is not going to be concluded any time soon and therefore, continued incarceration of the applicant/accused is neither justified nor warranted. The Ld. Counsel for accused/applicant is placing reliance on the decision of Hon'ble

High Court of Delhi in '*Pascal Ezeigbo @ Prince Vs State*', BA No. 3494/2024 & '*Obinna Augustin Ndububa Vs State*', Neutral Citation:2025:DHC:2184.

7. It has been submitted by the Ld. counsel for the applicant/accused that the applicant/accused is ready to abide with any condition that this court may impose upon him. The Ld. Counsel has also relied upon the decision of the Hon'ble Delhi High Court in "*Phundreimayum Yas Khan Vs Stae (GNCTD)*", **Bail Application No. 1383/2022, date of decision 11.01.2023.**

8. It is submitted by the Ld. Counsel for the applicant/accused that in the present case there has been non-compliance of mandatory provision, i.e Section 52 of the NDPS Act, since grounds of arrest were never supplied to the applicant/accused by the IO. Only arrest memo was prepared, which are not containing any grounds of arrest. The fundamental right of the applicant/accused as enshrined in Articles 21 and 22 (1) of the Constitution of India have been repudiated and hence, the arrest was illegal and *non-est*. The Ld. Counsel has relied upon the decisions of the Hon'ble Supreme Court in "*Pankaj Bansal Vs UOI & Ors.*" (2024) 7 SCC 576; "*Prabir Purkayastha Vs State (NCT of Delhi)*", (2024) 8 SCC 254; and "*Vihaan Kumar vs State of Haryana*", 2025 SCC OnLine SC 269.

9. It is submitted by the Ld. Counsel for the applicant/accused that there the reasons of arrest as allegedly supplied to the applicant/accused are not complying with the mandatory guidelines issued in the aforementioned decisions. Furthermore, the grounds of

arrest were not supplied to the family members of the applicant/accused, which is also a mandatory requirement as per the law laid down by the Hon'ble Supreme Court in ***Prabir Purkayashtha (Supra)***. The personal search memo does not reflect that the written grounds of arrest were recovered from his possession.

10. Per contra, it is submitted by the Ld. SPP for CBN duly assisted by the IO that applicant/accused was caught red handed with commercial quantity of contra-band/banned psychotropic substances and at his instance, there is further recovery of the commercial quantity of the contra-band from his house. The present applicant/accused was specifically named by the secret informer. All the procedural requirements u/s 41, 42 & 50 of the Act were duly complied with. The applicant/accused was arrested at the pointing out of the secret informer and in the presence of independent witnesses. At his instance, co-accused Konate Djakaradja was arrested and further recovery of the commercial quantity of the contraband was effected. The FSL result has come out positive for MDMA and Etizolam. The accused person had voluntarily disclosed his involvement in the present case and his statement U/s 67 of the Act was duly recorded. The twin conditions of section 37 are not satisfied by the applicant/accused. If released, he may indulge in similar offences and he may abscond and flee away from the hands of justice. Therefore, the CBN is strongly opposing the present application.

11. The Hon'ble Supreme Court of India had recently in the case of '***Ahmed Mansoor and Ors. v. The State represented by***

Assistant Commissioner of Police and Anr.’, Criminal Appeal No. 4505/2025, date of decision 14.10.2025 had upheld the decisions in Pankaj Bansal (Supra), Prabir (Supra), Vihaan Kumar (Supra) and Kasireddy (Supra) and had distinguished the decision in ‘*State of Karnataka v. Sri Darshan Etc.*’, Criminal Appeal No. 3528-3534/2025 dated 14.08.2025 and held that the grounds of arrest should be communicated, as explained by the Hon’ble Apex Court in Vihaan Kumar (Supra). Therefore, the law laid down in Vihaan Kumar (Supra) was approved and reiterated.

12. The Hon'ble Supreme Court of India recently in ‘*Mihir Rajesh Shah v. State of Maharashtra & Anr.*’, **Neutral Citation: 2025: INSC: 1288, on 06.11.2025**, had categorically held that the Constitutional mandate of informing the arrestee the grounds of arrest is mandatory in all offences under all statutes including offences under IPC, 1860 (now BNS, 2023). The grounds of arrest must be communicated in writing to the arrestee in the language he/she understands and where the Arresting Officer is unable to communicate the grounds in writing on or soon after arrest, it be so done orally and the said grounds must be communicated in writing within a reasonable time and in no case later than two hours prior to production of the arrestee for remand proceedings before the Magistrate. The non-compliance would lead to the arrest and the subsequent remand being rendered illegal and the person will be at liberty to be set free. The Hon'ble Supreme Court of India had further held that the law laid down in **Vihaan (Supra)** and **Prabir (Supra)** had to be followed in all cases.

13. Since, no grounds of arrest were ever communicated to the applicant/accused and his family members/friends/relatives. It has led to non-compliance of Article 22(1) of the Constitution of India and Section 52 of the Act. Therefore, the rigours of section 37 shall not apply to the present case, as the applicant/accused was never granted the opportunity to mete out the stringent conditions leveled in the present case. This in itself is enough to grant him bail, however, in the present case, since the notice U/s 50 is not mentioning about the legal right of the applicant/accused to be searched in the presence of Gazette Officer or nearest Magistrate, therefore, there is reasonable grounds to believe that Section 50 was not strictly complied and the ratio of decision in *Mina Pun (Supra)* and *Emeka Emmanuel (Supra)* is fully applicable. Furthermore, no separate authorization was sought qua the house search of the applicant/accused, therefore, *prima facie* there is even non-compliance of Section 41 (2) of the Act and the decision of *Smt. Najmunisha (Supra)* is also covering the decision of the present case. Therefore, there exists strong reasonable grounds to believe that the applicant/accused may not be guilty for committing the offence, he is charged with. Lastly, the conduct of the CBN, wherein time and again, it had caused the delay in trial and which led this Court to record in the order dated 28.10.2025 that:-

‘It is submitted by Ld. SPP for CBN that inspite of issuance of summons, there is no service report which has been received back and no witness is present today.

Perusal of record reflects that the charges against the accused persons were framed by the Ld. Predecessor of this

Court on 28.02.2024, and since then the matter has been listed for PE.

On 15.05.2024 and 12.09.2024, no witness had appeared to depose before this Court. Thereafter, on 04.12.2024, PW-1 Devendra Singh was partly examined-in-chief and his examination could not be conducted since, the CBN has not produced the remanent samples. On 05.12.2024, no PW was present and the Ld. Predecessor of this Court had apprised the CBN to ensure the presence of witnesses on each and every date, since the accused persons were still in JC.

Thereafter, on 15.05.2025, the CBN could not lead the evidence since both the Ld. SPPs were not available. Thereafter, on 22.07.2025, the CRCL Expert, PW-1 Devender Singh was finally further examined, cross-examined and discharged. Fresh summons were sent to PW Praveen Dhull and PW Tilak Singh and the process has not been received back.

This Court has to record the sorry state of affairs of all the cases being prosecuted by CBN before this Court, wherein inspite of issuance of summons, on majority of dates, the process does not return back to this Court. On the other dates, the witnesses do not appear. On the remaining dates, the evidence is not led for one reason or the other. The accused persons have remained in JC since, February 2023 and the delay in trial is fully attributable to CBN.

Let fresh summons be issued to all the prosecution witnesses which are remaining to be examined, to be executed through Worthy Commissioner CBN, Gwalior. Let the copy of this order-sheet be sent along-with the summons. It is made abundantly clear that if the CBN fails to produce the prosecution

witnesses, then this Court would be constrained to take coercive steps and the prosecution evidence would be closed’.

14. After considering the rival contention of the parties, considering the facts & circumstances of the present case, Although, the secret information was received around 28-29 hours prior to the alleged apprehension, recovery and seizure, yet the said proceedings were neither photographed nor videographed. Therefore, a shadow of doubt is created upon the said proceedings. Reliance is placed on the decision of the Hon'ble High Court of Delhi in ‘***Bantu v. State (NCT of Delhi)***’, **2024 SCC OnLine Del 4671**. The applicant/accused has remained in custody for over one year and nine months and the delay in trial is attributable only to the CBN. The recovery was made from a busy public area during the peak hours when the market was open and yet no videography/photography as certainly raised serious doubts over the very fulcrum of the case. The matter of recovery is a matter of trial, there is no justification for the absence of photography or videography. There is *prima facie* non-compliance of Section 41 (2) of the Act and even the provisions of Section 50 of the Act was not strictly complied with. Lastly, the mandatory grounds of arrest in writing were not supplied to the applicant/accused. Therefore, the applicant/accused has been able to satisfy the test of section 37 of the Act. Reliance is placed upon the decisions of Hon'ble High Court of Delhi in ‘***Bantu Vs State of NCT of Delhi***’, 2024 OnLine Del 4671 and ***Pascal (supra)***, ***Emeka Emmanuel (supra)*** and ***Gopal Dangi (supra)*** and the decisions of the Hon'ble Supreme Court of India in ***Mina Pun (Supra)***,

Najmunisha (Supra). 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 Henry Tochukwu is admitted to regular bail on following conditions :-**

- (i)** On furnishing of personal bond of **Rs. 1,00,000/- with two local sureties** of the like amount, to the satisfaction of this Court.
- (ii)** He shall not leave the country without the permission of this Court and he shall deposit his passport with this Court (if not already done).
- (iii)** He shall not try to tamper the evidence or hamper the trial or try to influence the remaining witnesses, in any manner and shall not indulge in any act or omission that would prejudice the proceedings in the present case, in any manner whatsoever.
- (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 and this Court (no later than 3 days of the said change).
- (v)** He shall attend the trial without any single default.
- (vi)** He shall mark his attendance with the concerned office of CBN on every first Monday of the Calendar Month, till the trial is pending.

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

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

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

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

19. Application is disposed of accordingly.

20. 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/SPECIAL JUDGE (NDPS)/
PHC/NEW DELHI/22.12.2025