

IA No. 10/2025
SC No. 448/2024
NCB Vs. Egenti Wisdom Chibueze

18.07.2025

Present: Sh Akshay, Ld proxy counsel on behalf of Sh Arun
Khatrri, Ld SPP for NCB.
Ms Mamta Wadhwa, Ld. Counsel for
applicant/accused.

Vide my separate order of even date, the present
application is dismissed 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
18.07.2025

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ORDER

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

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 29.06.2024. The present applicant/accused has been falsely implicated in the present case upon the disclosure statement of co-accused Nadeem.

4. It is submitted by Ld. Counsel for applicant/accused that the bail is being sought on the grounds of non-compliance of mandatory section 50 NDPS Act, 1985. Prior to the search, no notice u/s 50 NDPS Act was given, therefore, the entire search and seizure proceedings stands vitiated.

5. It is submitted by Ld. Counsel for applicant/accused that the grounds of arrest were not supplied to the applicant/accused

and the procedure u/s 50 CrPC and section 52 NDPS Act was not followed, therefore, vitiating the arrest and repudiation of his fundamental rights enshrined under Article 22 (1) of The Constitution of India.

6. It is submitted by Ld. Counsel for applicant/accused that no public witness was made to join the investigation at the time of search, seizure and arrest proceedings. There were no photographs or video taken, thereby, creating serious doubts on the entire proceedings.

7. It is submitted by Ld. Counsel for applicant/accused that inspite of being arrested on 29.06.2024 and the complaint being filed, till date the charges have not been framed. The prosecution has cited 25 witnesses and the trial is going to take a long time and continued incarceration is neither justified nor warranted.

8. It is submitted by Ld. Counsel for applicant/accused that he is ready to abide with any condition that this court may impose upon him, if the present application is allowed and he is enlarged on regular bail.

9. Per contra, it is submitted by the Ld. SPP for NCB that there is a recovery of 86gm of Amphetamine i.e. commercial quantity, from the possession of applicant/accused. The provisions of section 37 NDPS Act are attracted and the arrest of applicant/accused is not merely on the basis of the disclosure statement of co-accused, since, substantial quantity of the contraband was duly recovered from him. Prior to the said

apprehension, he was duly identified by co-accused as the person from whom he had purchased/taken drugs on multiple occasions in the past. Upon the NCB team reaching near the applicant/accused, he got suspicious and started running. The applicant/accused was intercepted and overpowered and he was carrying a white colour polythene in his right hand. The recovered drugs were not present physically upon the body of the applicant/accused and the recovery was effected after the search of said polythene was made. Therefore, there is no question of providing any notice u/s 50 NDPS Act. The role was not frequented by the many passersby at that time and therefore, nobody could be made to join the investigation and couple of independent public persons were requested, however, they refused citing their genuine difficulties. The grounds of arrest were duly supplied in the arrest memo itself which is self explanatory and contains all the details of the recovery of the contraband and the sections of law, which were violated by him. His arrest was duly made after he was explained the grounds and information regarding his arrest was provided to his wife over telephonic call, on the number provided by him. The trial is yet to begin and material witnesses are yet to be examined, therefore, if he is released on bail at this stage, then he may abscond and flee away from the hands of justice and may also return back to trade in the narcotic substances endangering the life and personal safety of members of general public. Therefore, the NCB is strongly opposing the present application.

10. I have carefully perused the complaint and the documents annexed therewith. The arrest memo dated 29.06.2024 is prima

facie having detailed grounds of arrest, wherein the arresting officer has duly given the details of the recovery of contraband affected from the applicant/accused and also on the basis of the statement made by him u/s 67 NDPS Act. The subjective satisfaction of the arresting officer for the reasons to believe that applicant/accused has committed the offence u/s 8/22/29 NDPS Act, 1985 are duly enumerated therein.

11. As far as the notice u/s 50 NDPS Act is concerned, it is not the case of the NCB that the seizing officer wanted to conduct the personal search of the applicant/accused. The essence of notice under section 50 NDPS Act is to inform the suspect of his right to be searched before Gazetted Officer/Magistrate, to protect his rights and to ensure credibility of the search and seizure proceedings, however, the said notice is not required to be given if search of any bag or article carried by the person is to be effected. Reliance is placed on the decision of Hon'ble Supreme Court of India in “***Ranjan Kumar Chadha Vs State of Himachal Pradesh, 2023 INSC 878***”.

12. The statement of the arresting witnesses is categorical and the same cannot be disbelieve at this stage merely because the photographs or video were not taken. Although preferable, the said videography and photography is not *sine qua non* of the recovery in NDPS cases.

13. The recovery proceedings cannot be doubted at this stage merely because the public witnesses were not joined at the time of arrest/search and seizure, since, it is not uncommon these days

people are generally reluctant to become part of investigation. Unless there is a question of previous enmity between accused and police officials, the statement of the police officials cannot be seen from the lens of doubt. Reliance is placed upon the decision of Hon'ble Supreme Court of India in “*Sunil Tomar Vs State of Punjab, Crl. Appeal No. 1690/2012*” and the decision of Hon'ble High Court of Delhi in “*Bheru Lal Vs State, Crl Appeal No. 572/2014*”.

14. After considering the rival contention of the parties, in light of the facts & circumstances of the present case, **Firstly**, the recovery of commercial quantity of contraband from the applicant/accused; **Secondly**, the notice u/s 50 NDPS Act was not mandatory, since the recovery was effected from the polythene bag carried by the applicant/accused and not from his person; **Thirdly**, the arrest memo although called as one, is essentially containing all the grounds of arrest, therefore, prima facie there is substantial compliance of section 52 NDPS Act; **Fourthly**, the doubts, if any created by non-joining of public witnesses or there being no photographs/video of the recovery proceedings does not go to the root of the matter, since the proceedings before Ld. MM u/s 52A NDPS Act were duly effected; **Fifthly**, at this stage, this Court can not give any definitive finding upon the twin conditions enshrined u/s 37 of the NDPS Act, 1985.

15. In view of the discussions in the preceding paragraphs, this Court is not inclined to grant regular bail to the applicant/accused at this stage. The present application stands dismissed accordingly.

16. Needless to say nothing expressed herein shall have any bearing on the merits of the case.

17. Application stands disposed off accordingly.

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. 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
18.07.2025