

18.03.2026

Present :- Ms. Mala Sharma, Ld. Counsel for DRI
Sh. JS Khushwaha, ld. Counsel for the applicant /
accused.

This is an application u/s 483 BNSS for grant of regular bail moved on behalf of accused Alicia Letona.

Reply to the application filed by DRI is already on record.

1.0 As per allegations, on or before 04.04.2025, accused Alicia entered into a criminal conspiracy with one Samuel (not arrested) and one unknown (not arrested) for the purpose of import of 1545 gms of cocaine hydrochloride, which she had to handover to the unknown person at Hotel Airport where she were to stay in India. In pursuance of the said conspiracy, on 04.04.2025 at about 08.45am, accused Alicia arrived at IGI Airport from Harcot Court, Nigeria to Doha by flight No. Q\$1434 dtd 03.04.2025 and thereafter from Doha, Qatar to New Delhi by Flight No. QR570 dated 04.04.2025 where she was apprehended by the DRI officers and was found in possession of cocaine hydrochloride weighing 1545gms (net weight as per proceedings u/S 52A NDPS Act) kept in 06 packets concealed in a cavity near bottom of trolley bag, rod handle, and 02 pair of footwear, which was imported into India illegally.

2.0 Ld. Counsel for the applicant / accused Ld. Counsel for the applicant / accused is innocent and has been falsely implicated in this case. It was argued that the accused being a lady was arrested after sunset without obtaining prior permission from the concerned Magistrate. It was argued that the accused was

detained at about 08:45am when she arrived at IGI Airport, however, as per her arrest memo, she was arrested at about 11:30pm i.e., after sunset without permission from the concerned Ld. MM. It was further argued that notice u/s 50 NDPS Act was not properly explained to the accused and that the notice alongwith the reply was pre-typed and signatures of the accused were taken forcibly on the notice. Even the notice u/s 102 Customs Act is defective and the same was also pre-typed alongwith the reply. It was further argued that the signatures of the applicant / accused on notice u/s 50 NDPS Act and 102 Customs Act are different. It was further argued that notice u/s 67 NDPS Act is defective as it did not inform the accused about her right to remain silent. Further, that the weight of the samples taken during proceedings u/s 52A NDPS Act vary which shows the malafide intention of the prosecution. It is further submitted that there is a delay of 04 days in conducting the proceedings u/s 52A NDPS Act. The accused is in custody since 04.04.2025 and trial is likely to take considerable time and hence, prayed that the applicant / accuse be released on bail. Ld. Counsel in support of his contention relied upon *Customs Vs. Mohammad Bagour*, 2012 (1) JCC (Narcotics) 1, *Efrance Namatende Vs. State*, Bail Appln. 2214/2022 decided on 18.11.2022, *Kavita Manikikar Vs. CBI &Anr*, Writ Petition No. 1142/2018 decided on 10.05.2018, *Sujata Vs. The State of Maharashtra*, Crl Appln. (BA)No. 372/25 decided on 11.07.2025, *Dr. Sangeeta Dutta Vs. The State & Anr.*, Bail Appln. No. 2805/2025 decided on 18.11.2025, *Devyani Kundra Vs. State of NCT of Delhi*, Bail Appln. No. 2740/25 decided on 28.10.2025,

Kitoka Ngiembo Alain Vs. Customs, Bail Appln. 3428/2025 decided on 16.02.2026 and *Habiob Bedru Omer Vs. Customs*, 2025 SCC Online Del 4263.

2.1 Ld. SPP on the other hand argued that only after recording of statement of accused u/s 67 NDPS Act, she was arrested at 23:30hrs on 04.04.2025 and thereafter, she was got medically examined at 10:05am on 05.04.2025 and then produced before the Ld. MM. As such the arrest of accused and her production before the Ld. MM was well within the statutory period of 24 hours as mandated under law. It is further argued that notice u/s 50 NDPS Act and 102 Customs Act were served in accordance of law upon the accused and only after her consent, her search was conducted. It was further argued that no notice for search of baggage is required. Further, that the CRCL accepts the samples only after verifying that the seals are in intact condition and tallies with the test memos prepared during the proceedings and as such, the allegation of foul play does not stand. It was further argued that the recovery was effected on 04.04.2025 which was a Friday at about 04:45pm and the panchnama was prepared at about 5pm and thereafter, Saturday and Sunday were official holidays and thereafter, on Monday i.e., 07.04.2025, the case property was deposited in godown and the application u/s 52A NDPS Act was moved on 08.04.2025 without any deliberate delay. The accused was found in possession of 1542 cocaine and hence, there is embargo of Sec. 37 NDPS Act. Ld. SPP has relied upon *NCB Vs. Kashif*, Crl. Appeal No. 5544/2024 decided on 20.12.2024, *Union of India (NCB) Vs. Khaliluddin*, Crl. Appeal No. 1841-1842/2022

dated 21.10.2022, *State of Kerala Vs. Rajesh*, CrI. Appeal No. 154-157/2020 decided on 24.01.2020, *NCB Vs. Mohit Aggarwal*, CrI. (Appeals) No. 1001-1002 of 2022 decided on 19.07.2022, *State of Maharashtra Vs. Christian Community Welfare Council of India & Anr.*, AIR 2004 SC 7, *Deepa Vs. S. Vijayalakshmi & Ors.*, WA (MD) No. 1155 of 2020, 1200 & 1216 of 2019 decided on 07.02.2025, *Union of India Vs. Vigin K. Varghese*, 2025 (4) Crimes 341 (SC), *Roshan Beevi & Ors Vs. Jt. Secretary to Govt of Tamil Nadu & Ors.*, 1983 SCC Online Mad 163.

3.0 Arguments heard. Record perused.

4.0 The accused was apprehended on 04.04.2025 at IGI Airport while she arrived from Qatar and on search of her baggage, 1545gms of cocaine hydrochloride kept in 06 packets concealed in a cavity near bottom of trolley bag, rod handle, and 02 pair of footwear, were recovered. During the course of arguments, Ld. SPP produced the notesheet of the IO, wherein it has been noted that the accused being a foreign national, there was apprehension that she may evade custody and hence, she was arrested on 04.04.2025 at 11:25pm. This is undoubtedly after sunset and before sunrise. The applicant / accused is a woman. No prior permission from the jurisdictional Magistrate was obtained before effecting arrest. No doubt, there has been a breach of the statutory mandate set out in [Section 46\(4\)](#) of Cr.P.C. But the question that calls for consideration is whether [Section 46\(4\)](#) of Cr.P.C is

mandatory. In *Deepa's case (supra)*, the Hon'ble High Court of Madras observed as under:

"11. Section 46(4) Cr.PC reads as under:

46. Arrest how made - ...

(4) Save in exceptional circumstances, no woman shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made." Section 43(5) of BNSS Act, 2023 which corresponds to Section 46(4) of Cr.P.C is identically worded."

12. Section 46(4) of Cr.P.C was considered by quite a few High Courts. We came across quite a few decisions wherein arrests made in breach of the procedure set out in Section 46(4) of Cr.P.C were declared illegal. Even compensation was awarded in some cases (2021 SCC OnLine Bom 150 (Aleksander Kurganov Vs State of Maharashtra, 2018 SCC Online Bom 1095 (Kavitha Manikikar of Mumbai Vs Central Bureau of Investigation), 2016 SCC OnLine Gowhati 783 (Tanuja Roy Vs State of Assam). Even though we are conscious that Section 46(4) of Cr.P.C is a beneficial provision incorporated to ensure the safety of women, we are unable to hold that it is mandatory.

13. Section 46(4) of Cr.P.C was inserted by Act 25 of 2005 with effect from 23.06.2006. The 135th report of the Law Commission of India on Women in Custody (1989) recommended that ordinarily no women shall be arrested after sunset and before sunrise and in exceptional cases calling for arrest during these hours, prior permission of the immediate, superior officer shall be obtained or if the case was of extreme urgency, then after arrest report with reasons shall be made to the immediate superior officer and to the Magistrate. The 154th report of the Law Commission of India suggested incorporation of the following provision in Section 46 of Cr.P.C:

"Save in exceptional circumstances, no woman shall be arrested after sunset and before sunrise,

*and where such exceptional circumstances exist, the police officer shall, by making a written report, obtain the prior permission of the immediate Superior Officer for effecting such arrest, or if the case is one of extreme urgency and such prior permission cannot be obtained before making such arrest, he shall, after making the arrest, forthwith report the matter in writing to his immediate superior officer explaining the urgency and the reasons for not taking prior permission as aforesaid and also shall make a report to the Magistrate within whose local jurisdiction the arrest had been made.” In Section 46(4) of Cr.P.C / 43(5) of BNSS, 2023 the expression “Shall” is found. It is well established that an enactment in form mandatory might in substance be directory and that the use of the word “shall” does not conclude the matter (*Hari Vishnu Kamath vs Ahmad Ishaque* (AIR 1955 SC 233)). The construction of a statutory provision as directory or mandatory must depend on the legislative intent and context in which it was made and not upon the language in which the intent is clothed. The meaning and intention of the legislature are to be ascertained by having regard to its nature, design and the consequences which would follow from construing it in one way or the other (vide *State of Mysore vs V.K. Kangan* (AIR 1975 SC 2190)). Merely because a provision of law is couched in a negative language implying mandatory character, the same is not without exceptions. The Courts when called upon to interpret the nature of the provision, may, keeping in view the entire context in which the provision came to be enacted, hold the same to be directory (2005) 4 SCC 480 (*Kailash vs Nankhu*).*

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15. Section 46(4) of Cr.P.C has not spelt out the consequence of non-compliance with the requirement set out therein. If the provision was intended to be mandatory, the legislature would definitely have provided for the consequences of non-compliance. It cannot be denied that when a Police officer effects arrest pursuant to the power conferred on him by Cr.P.C, he is carrying out a public duty. The matter is not between the official effecting arrest

and the arrestee. There is a third party involved, namely, victim / defacto complainant. The victim cannot be allowed to suffer for the neglect of duty by the Police officer.

16. There are certain practical aspects to be borne in mind. Let us conceive of this situation: a woman commits murder after sunset and before sunrise; the information reaches the local Police Station; the accused is about to escape; in such a situation, should the officer concerned prepare a written report, send it to the local Magistrate, wait for His Honour's permission and upon receipt thereof, proceed to arrest the accused? We have no doubt in our minds that the horse would have bolted by then. Mechanical adherence to procedures can injure public interest at times. That is why, when the Nagpur Bench of the High Court of Bombay directed the State Government to issue instructions to all police officials that no female persons shall be detained or arrested without the presence of the lady constable and in no case after sunset and before sunrise, the Hon'ble Supreme Court in *State of Maharashtra Vs Christian Community Welfare Council of India* (2003) SCC 8 546 observed that while they agreed with the object behind the direction, a strict compliance with the said direction in a given circumstance would cause practical difficulties to the investigating agency and even might give room for evading the process of law by unscrupulous accused.

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19. Though we have held that [Section 46\(4\)](#) of Cr.P.C / [43\(5\)](#) of BNSS is directory and not mandatory, the provision cannot be rendered otiose by the Police. There is a laudable reason for incorporating such a provision. It is meant to serve as a note of caution to the officers effecting arrest of women. While failure to adhere to the statutory requirement may not lead to the arrest being declared illegal, the officer concerned may have to offer explanation for inability to comply with the procedure.”

4.1 In *Smt. Sadhna Upmanyu vs. Station House Officer ACB and others*, 2016 SCC OnLine Raj 6502 also observed the followings:

"8.

Although, sub-section (4) of [Section 46](#) Cr.P.C. provides that no woman shall be arrested after sun set and before

sun rise except in exceptional circumstances and where the police officer effecting arrest after sun set and before sun rise claims existence of some exceptional circumstances, he must obtain the prior permission of the Judicial Magistrate or Special Court within whose local jurisdiction the offence has been committed or the arrest is to be made but it cannot be said that under no circumstances can such requirement be waived. The exigencies of the situation have to be taken into account before it is held that arrest of the woman has been made in contravention of this provision. In a case it may happen that offence itself is committed after sun set and before sun rise and after undertaking some preliminary investigation involvement of a woman is found in the offence and her immediate arrest is required to be made and practically it is not possible to obtain the prior permission of the concerned Magistrate, in my opinion in such a situation the arrest of the woman accused cannot be said to be in contravention of the requirement of this provision and it does not amount violation of fundamental right conferred upon such woman under [Article 21](#) of the Constitution of India. It is well settled legal position that personal liberty of a person can be curbed by procedure established by law and [Code of Criminal Procedure](#) is one of such procedural law."

The Hon'ble Supreme Court in case of ***State of Maharashtra vs. Christian Community Welfare Council of India and another***, (2003) 8 SCC 546, the Hon'ble Supreme Court held as under:

"9. Herein we notice that the mandate issued by the High Court prevents the police from arresting a lady without the presence of a lady constable. The said direction also prohibits the arrest of a lady after sunset and before sunrise under any circumstances. While we do agree with the object behind the direction issued by the High Court in sub-para (vii) of the operative part of its judgment, we think a strict compliance with the said direction, in a given circumstance, would cause practical difficulties to the investigating agency and might even give room for evading the process of law by unscrupulous accused. While it is necessary to protect the female sought to be arrested by the police from police misdeeds, it may not be

always possible and practical to have the presence of a lady constable when the necessity for such arrest arises, therefore, we think this direction issued requires some modification without disturbing the object behind the same. We think the object will be served if a direction is issued to the arresting authority that while arresting a female person, all efforts should be made to keep a lady constable present but in the circumstances where the arresting officers are reasonably satisfied that such presence of a lady constable is not available or possible and/or the delay in arresting caused by securing the presence of a lady constable would impede the course of investigation, such arresting officer for reasons to be recorded either before the arrest or immediately after the arrest be permitted to arrest a female person for lawful reasons at any time of the day or night depending on the circumstances of the case even without the presence of a lady constable. We also direct that with the above modification in regard to the direction issued by the High Court in sub-para (vii) of this appeal, this appeal is disposed of."

4.2 Admittedly, since the accused was apprehended after sunset and before sunrise without prior permission of Ld. MM and thus, amounts to violation of Sec. 46(4) Cr.PC and calls for an explanation as held in *Deepa's case (supra)*. But at the same time, permits arrest of a woman after sunset, without prior permission of a Magistrate in exceptional circumstances. Thus, considering the gravity of the offence, the factum of accused being caught red handed with the contraband substance and its effects on the society at large, I am of the considered opinion that no case for grant of bail is made out at this stage. Further, the accused has not been able to overcome the twin hurdles of Sec. 37 NDPS Act. So far as the discrepancies in the search and seizure are concerned, the

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same are subject matter of trial and cannot be looked at this juncture without providing an opportunity to the prosecution to explain the same. Accordingly, **the bail application of accused Alicia Letona is dismissed.**

The application is disposed off accordingly.

Copy of the order be given dasti.

(Ajay Garg)
Special Judge-NDPS/ASJ (South)
Saket Courts/18.03.2026