

Bail Appln. No. 274/26
DRI VS. DAVID MWANZA

07.04.2026

Present :- Ms. Mala Sharma, Ld. Counsel for DRI
Ms. Dolly Nair, Ld. Counsel for applicant / accused.

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

Reply filed by DRI is already on record.

1.0 Ld. Counsel for the applicant / accused argued that applicant / accused is innocent and has been falsely implicated in this case. It is further submitted that accused was accompanying a patient when he was apprehended and falsely implicated in the present case. Further, the accused fully cooperated with the Customs officers while search of his baggage was being conducted. It was further argued that specific information was received only qua accused Donlia Phiri to be carrying contraband substance and there was no mention of the present applicant / accused in the said information. It is further submitted that there was no ground for detention / arrest of the applicant / accused, when he was taken to RML Hospital. It is further submitted that none of the baggage of the applicant / accused was found to contain any contraband, which was scanned through x-ray baggage machine. It was further argued that reply of the accused to notice u/s 50 NDPS Act and notice u/s 102 Customs Act is in typed form and not written by the applicant / accused in his own handwriting, which creates a doubt on the authenticity of the notice u/s 50 NDPS Act. It is further argued that the applicant / accused was not

enquired if he understands English language or not. It is further argued that notice u/s 50 NDPS Act and the panchnama dated 16.12.2022 were in English which is stated to have been explained to the applicant /accused in vernacular but since the accused was well not versed in the English language, the consent given by him raises casts doubt on the proceedings conducted by the DRI. Further, that it is mentioned in panchnama dated 16.12.2022 that the applicant / accused gave his consent in writing on the notice u/s 50 NDPS Act and 102 Customs Act whereas the same is in typed form. It is further submitted that the mandatory provisions requiring two or more independent witnesses was not followed in the instant matter. It is further submitted that the panchnamas were prepared in English language and stated to be explained to the panch witnesses which raises doubt on the story of the prosecution whether the witnesses had joined the proceedings or ot as the panchnamas were not documented in the mother tongue of the panch witnesses. The accused is stated to have eased out / purged out 33 capsules containing contraband substance at the Custom Office washroom but it is no where mentioned that the the accused eased out the same in the presence of a Gazetted Officer and the witnesses which vitiates the said proceedings. Nor are there photographs which show such 33 capsules so purged out / eased out. All the eased out capsules were not checked for presence of contraband and only some of them were checked but still all the capsules were placed together in one zip lock bag in contravention of the mandated procedure. Even the panchnama does not mention

whether any test of the capsules for the presence of contraband was conducted or not. There is also discrepancy in the colour of the substance so recovered from the capsules as in some places it is mentioned as white and in some as off white. It is further submitted that there is a delay in sending the samples to CRCL and receipt of CRCL result. It is further submitted that the statement of accused u/s 67 NDPS Act cannot be used as confessional statement in the offences under the NDPS Act. It is further argued that in the cases of prolonged incarceration the rigors of Sec. 37 NDPS Act would not come into play. The accused is in JC for more than 03 years and trial is likely to take considerable time. It is submitted that there are errors / discrepancies in the panchnama and other documents related to the search, seizure and arrest of the accused. No photography or videography of the search proceedings were got conducted. Ld. Counsel in support of her contention relied upon *Kasif Vs. NCB*, 2023 SCC Online Del. 2881, *Simranjit Singh Vs. State of Punjab*, 2023 SCC Online SC 906, *Toofan Singh Vs. State of Tamil Nadu*, (2021) 4 SCC 1, *Sanjeev Chandra Aggarwal & Anr Vs. Union of India*, *Habibullah Nabi Zada Vs. NCB*, Bail Appln. No. 2645/2022 decided on 26.02.2024, *Jitender Jain Vs. NCB*, SLP (Crl.) No. 8900/2022, *Rabi Prakash Vs. The State of Odisha*, SLP (Crl.) No. 4169 of 2023 dated 13.07.2023, *State of Punjab Vs. Baldev Singh* (1999) 6 SCC 172 and *Arif Khan Vs. State of Uttarakhand* (2018) 18 SCC 172, *State of UP Vs. Subhash Kumar Singh Tomar*, Crl. Appeal No. 237 of 2004 decided on 15.04.2009, *T. Hamza Vs. State of Kerala*, *Gulhasan Gulsher Khan Vs. DRI*, Bail Appln No. 873/2004 dated 11.02.2026, *Pahalman Budha Magar Vs. State NCT of Delhi*, Bail

Appln.No. 4034 of 2025 decided on 21.01.2026, *Kitoko Ngiembo Aalain Vs. Customs*, Bail Appln No. 3428/25 dated 16.02.2026, *Babion Bedru Omer Vs. Customs*, Bail Appln No. 1978/2024 decided on 03.06.2025, *Sajan Kumar Vs. State (NCT of Delhi)*, Bail Appln No. 4955/25, decided on 12.02.2025, *Jabir Khan Vs. State of Madhya Pradesh*, SLP (Crl.) No. 2993/2025 decided on 21.04.2025, *Gurprabh Singh @ Prince Vs. State of Punjab*, CRM M 50716-2024 (O&M) decided on 27.02.2025, *Taslina Alisa Putti Vs. The State*, Bail Appln No. 3173/2025 decided on 17.02.2026, *Sunil Kumar Vs. State NCT of Delhi*, Bail Appln. No. 4882/2025 decided on 13.02.2026, *Wajid Ali @ Tinku Vs. State of Rajasthan*, SLP (Crl.) No. 9728/2025, *Sahil Sharma @ Maxx Vs. State Govt of NCT of Delhi*, Bail Appln. No. 3068/2025 decided on 03.12.2025.

2.0 On the other hand, it was argued on behalf of DRI that a total of 1557gms of cocaine was recovered in this case from the present accused as well as co-accused Donalia Phiri in the form of capsules and two blocks of soap bar (510 gms) and there is an embargo of Sec. 37 NDPS Act. It was further argued that the notice u/s 50 NDPS Act was duly served upon the accused and his signatures were also obtained on the same. It was further argued that the accused was taken to government hospital for screening, scanning and for further retrieval of capsules from his body after obtaining orders from the Ld. Duty MM, Patiala House Courts on 16.12.2022. The accused apart from purging out 33 capsules at the airport, also eased out 9 capsules at RML Hospital. Thus, a total of 42 capsules were purged out by the applicant / accused. It was

further argued that the recovery, seizure and subsequent proceedings were conducted strictly in accordance with law and the sampling was done under the supervision of Ld. MM as per Section 52A NDPS Act and therefore, there is no defect in the said proceedings. It is further submitted that the specific intelligence was received mentioning the name of both the accused. It is further argued that notice u/s 50 NDPS Act and 102 Customs Act were served in accordance of law upon the accused. Ld. SPP has relied upon *NCB Vs. Kashif*, CrI. Appeal No. 5544/2024 decided on 20.12.2024, *Union of India Vs. Rattan Malik @ Habul*, CrI Appeal No. 137 of 2009 decided on 23.01.2009, *State of MP Vs. Kajad*, JT (2001) 7 SC 560, *Hari Singh Mann Vs. Harbhajan Singh Bajwa & Anr.*, JT 2000 (Suppl. 2 SC 349), *State of Punjab Vs. Balbir Singh, Bipin Bihar Lenka Vs. NCB*, Bail Appln. No. 3191/2022, *Gaur Shankar Jaiswal Vs. NCB*, Bail Appln. No. 3294/22, *Surender Kumar CBN & Somdutt Singh Vs. NCB*, 2023 SCC Online Del 7580 and *Sheila Vs. Delhi State* 2024 (1) JCC 232, *Union of India Vs. Nawaz Khan*, CrI Appeal No. 1043 of 2021 decided on 22.01.2021, *NCB Vs. Khaliluddin*, CrI Appeal No. 1841-1842/2022 dated 21.10.2022, *State of Kerala Vs. Rajesh*, CrI. A. 154-157/2020 decided on 24.01.2020, *Union of India Vs. Mohd. Jamal*, CrI. Appeal No. 752/2022 decided on 06.05.2022, *Union of India Vs. Kuldeep Singh*, 2004 (2) SCC 590, *NCB Vs. Sambhu Sonkar & Anr.*, 2001 SCC (CrI.) 346, *Vijaysinh Chandubha Jadeja Vs. State of Gujarat*, AIR 2011 SC 77, *Gurvinder Singh Vs. State of Punjab & Anr.* CrI. Appeal No. 704/24 decided on 07.02.2024,

NCB Vs. Mohit Aggarwal, CrI.(Appeals) No. 1001-1002 of 2022 decided on 19.07.2022.

3.0 Arguments heard. Record perused.

4.0 As per allegations, the present applicant / accused alongwith co-accused Donalia Phiri conspired to smuggle contraband substance i.e. cocaine hydrochloride into India by concealing the same in their body. On 16.12.2022, both of them arrived at IGI Airport from Addis Ababa by flight where they were intercepted. The applicant purged out 33 capsules at the Customs Office washroom and later, he eased out /purged out 09 capsules at RML hospital. A total of 42 capsules were purged out by the present applicant and a total of 61 capsules were purged out by co-accused Donalia and a soap bar weighing 502.5 gms was also recovered from co-accused Donalia. Between the two of them, they were carrying 1557 gms of cocaine. Perusal of the record shows that the contraband substance concealed in the capsules and the soap bar were recovered from the applicant and the co-accused in the presence of independent witnesses and the same were duly recorded in the panchnamas. The sampling photography and inventory proceedings were also duly carried out under the supervision of Ld. MM. Perusal of the record would show that the accused had put his signatures on the notice u/s 50 NDPS Act and Sec. 102 Customs Act. Further, the accused had also written in English on the notice u/s 103 Customs Act that he had secreted the goods liable for confiscation and that he may be taken to medical examination / x-ray. It is also pertinent to mention here that the accused during the remand proceedings not once claimed that the

does not understand English and needs a translator. This is for the first time that this claim has been made. Thus, the argument of the Ld. Counsel for the accused that the accused does not understand English language cannot be accepted.

4.1 A perusal of the specific intelligence note date 15.12.2022, specifically finds mention of the name of the present applicant / accused in the same. Therefore, the claim of the Ld. Counsel does not find any basis that the name of the accused was not mentioned in the specific intelligence.

4.2 It is evident that provisions of Sec. 50 NDPS Act are mandatory in nature and require a strict compliance thereof. Reliance in this regard can be made to the decision of the Hon'ble Supreme Court in the case of *State of Punjab Vs. Baldev Singh*, CrI. Appeal No. 396/1990, decided on 21.07.99. The same was later reaffirmed by the Hon'ble Supreme Court in *Vijaysinh's case (supra)*. It was however, further held that the question whether or not the procedure prescribed u/s 50 NDPS Act has been followed, is a matter of trial. Therefore, the said issue can only be decided at trial after the prosecution has been afforded an opportunity to lead evidence in this regard.

4.3 The argument of the Id. Defence counsel regarding illegal detention also does not hold stand as the accused was produced before the Ld. MM on 16 -17.12.2022 itself and it is only as per the directions of the Id. MM that the accused was taken to RML Hospital for medical examination.

4.4 As far as the argument of Ld. Counsel for the applicant / accused regarding delay in sending the samples to FSL

is concerned, it has already been held time and again by the Hon'ble Apex Court that delay in sending the samples does not mean that the samples have been tampered with. The Hon'ble Supreme Court in *J Jarnail Singh Vs. State of Punjab, 2011 (2) JCC (Narcotics) 86*, held that mere delay in sending the sample to the office of Chemical Examiner would not be sufficient to conclude that the sample has been tampered with. The Hon'ble Court referred to its earlier decision in *Balbir Kaur Vs. State of Punjab, 2009 (3) JCC (Narcotics) 143* wherein the following observations were made:

“As far as delay in sending the samples is concerned, we find the said contention untenable in law. Reference in this regard may be made to the decision of this Court in Hardeep Singh where in there was gap of 40 days between seizure and sending the sample to the Chemical Examiner. Despite the said fact, the Court held that in view of cogent evidence that opium was seized from the appellant and the seals put on the sample were intact till it was handed over to the Chemical Examiner, delay in itself is not fatal to the prosecution case.”

Further, the Hon'ble Supreme Court in *Mohinder Vs. State of Haryana, 2013 (2) Crimes 206 (SC)*, held that where the sample reached the FSL intact in sealed condition, the delay in sending sample to FSL becomes immaterial. Further, the relevant portion of decision in *Khet Singh Vs. Union of India*, Appeal (Crl.) 31 of 2000 decided by Hon'ble Supreme Court on 20.03.2002 is reproduced herein under:

“Law on the point is very clear that even if there is any sort of procedural illegality in conducting the search and seizure, the evidence collected thereby will not become inadmissible and the Court would consider all the circumstances and find out whether any serious

prejudice had been caused to the accused. If the search and seizure was in complete defiance of the law and procedure and there was any possibility of the evidence collected likely to have been tampered with or interpolated during the course of such search or seizure, it could be said that the evidence is not liable to be admissible in evidence.”

5.0 Thus, in view of the above submissions, considering the gravity of the offence, 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 recovered quantity is way above the commercial quantity of cocaine and 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 same are subject matter of trial and cannot be looked at this juncture without providing an opportunity to the prosecution to explain the same. The Hon’ble Supreme Court in the case of *State of Punjab Vs. Balbir Singh*, AIR 1994 SC 1872, held that the procedural instructions, if not complied strictly then the same by itself does not render the acts done by the officers null and void and does not invalidate the trial or conviction, if otherwise, there is sufficient material. Moreover, the bail application of accused was dismissed by the Hon’ble High Court vide order dated 28.04.2025 and since then, there has been no change in circumstances. Accordingly, **the bail application of accused David Mwanza is dismissed.**

The application is disposed off accordingly.

Copy of the order be given dasti.

(Ajay Garg)
Special Judge-NDPS/ASJ (South)
Saket Courts/07.04.2026