

Bail Appln. No. 381/26  
DRI VS. LUZ MARINA BENITEZ ROSELLY

04.06.2026

Present :- Sh. Satish Aggarwal, Ld. SPP for DRI.  
Ms. Dolly Nair, Ld. Counsel for the applicant /  
accused.

This is an application u/s 483 BNSS for grant of regular bail moved on behalf of accused Luz Marina Benitez Roselly.

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 argued that the accused is 44 years old and is a resident of Roaviaria Boa Vista, Brazil. It is further submitted that applicant / accused has nine kids presently staying with one of her friend in Brazil and her parents live in Caracas, San Martin, Venezuela. It is further submitted that during her visit to Delhi for tourism, she was apprehended and falsely implicated in the present case. It is further submitted that the baggage of the applicant / accused was duly checked before boarding the flight from Sao Paulo to Doha and again from Doha to Delhi but nothing suspicious or contraband was found in the same. It is further submitted that the applicant / accused is separated from her family for more than two years. It is further submitted that the applicant / accused did not try to screen or shelter herself from Customs authority and that the accused fully cooperated with the Customs officers while search of her baggage was being conducted as she was not aware that any contraband substance would be found in

her luggage. It is further submitted that there has been non compliance of the provisions of NDPS Act while the search, seizure, testing, arrest and sampling proceedings were conducted. It was further argued that the accused on query during investigation submitted that she speaks Spanish language but still all the proceedings were carried out in English language though at some points, the Spanish written translations of contents have been prepared and submitted to the accused without further verifying the fact that the accused could understand Spanish or that she can fluently read and write the language too or simple had a rudimentary understanding of the Spanish language and as such, vitiates the entire proceedings in the present case. It is submitted that the knowledge of accused over the Spanish language is questionable as can be seen in her reply to the notice u/s 50 NDPS Act, statement of accused u/s 67 NDPS Act and arrest memo, which vitiates the aforesaid proceedings. It is further submitted that the English translation of the reply of the accused on the notice u/s 50 NDPS Act, would reveal that the reply is silent on the search of her baggage. It was further submitted that the notices u/s 102 and 103 Customs Act were not served upon the accused by the DRI officials. It is further submitted that the notice u/s 50 NDPS Act does not mention the word “nearest” before the word Gazetted Officer. It is further submitted that the panchnama does not mention about service of the notices u/s 50 NDPS Act, 102 and 103 Customs Act. It is further submitted that as per the mandate, two or more witnesses should be present while conducting search of the accused or her baggage, however, only one witness was present

during the said proceedings. 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 not as the panchnamas were not documented in the mother tongue of the panch witnesses. It is further submitted that the word “identification” is not mentioned in the panchnama dated 25.03.2024, where the panch witnesses were requested to join the proceedings and that the panchas did not voluntarily agree for search of the applicant / accused. It is further submitted that the panchnama records that after service of notice u/s 50 NDPS Act, the applicant / accused was informed that her personal search and search of the maroon trolley bag is to be conducted, however, the notice u/s 50 NDPS Act does not mention the colour maroon as of the trolley bag. It is further submitted that accused nowhere stated that she was carrying drugs in her body but only mentioned that she had taken some capsules of medication. It is further submitted that notice u/s 50 NDPS Act does not find mention that she requested the DRI officers to initiate action for bringing out the capsules from her body. It is further submitted that the recovery memo records the recovery of capsules in plastic which was supervised by a male doctor and the same is in contravention of the directions of the Ld. MM. It is further submitted that no recovery was made in the presence of two or more independent panchas which is clear violation of search and seizure procedure, mandated as per rules. It is submitted that out of the 123 capsules purged out by the accused, only one capsule was cut and tested with field testing kit by the

DRI officials. It is further submitted that during the proceedings u/s 52A NDPS Act, the contents of the capsules were taken out, crushed and then the powdered material were homogeneously mixed, which is a gross violation of the sampling proceedings. It is submitted that the discharge summary does not contain the x-ray / CT Scan or other imaging report which shows that the accused was carrying contraband in her body. It is further submitted that the discharge summary of the applicant / accused dated 01.04.2024 mentions in the brief summary that the accused confessed the intake of 123 capsules whereas the MLC dated 13.05.2024 does not find mention of the same and only mentions about concealment of suspected NDPS substance in the body in the form of capsules. 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 02 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 or arrest 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, *Shariful Islam @ Sarif Vs. State of West Bengal*, SLP Crl. No. 4173/2022, *Nitish Adhikary @ Bapan Vs. State of West Bengal*, SLP Crl. No. 5769/2022, *Md. Salman Hanif Sheikh Vs. State of Gujarat*, SLP Crl. No. 5520/21 and *Edith Namirembe Vs. Customs*, Bail Appln. No. 3267/2023.

1.1 On the other hand, it was argued on behalf of DRI that since the dismissal of the last bail application on 10.10.2025, there has been no change of circumstances. It is further submitted that a total of 123 capsules weighing 958.4 gms of cocaine hydrochloride were purged out by the applicant / accused in RML Hospital and as such, there is an embargo of Sec. 37 NDPS Act. It is submitted that when the applicant /accused was apprehended at IGI Airport, on enquiry she revealed that she speaks Spanish and therefore, efforts for a translator was made but due to early morning hours, and being festive day, no translator could be arranged and with the help of Google Translator, communications were made with the applicant / accused. The accused was produced before the Ld. Magistrate and upon directions of Ld. MM dated 25.03.2024, the applicant / accused was taken to RML Hospital. However, it is submitted that a Spanish translator Sh. Kumar

Sankalp was present when the accused was produced before the Ld. MM on 25.03.2024. 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 argued that notice u/s 50 NDPS Act was served in accordance of law upon the accused. It is submitted that during the search of the accused two witnesses were present which included one lady panch witness. It is further submitted that the recovery from the applicant / accused clearly establishes conscious possession of the contraband by the accused. Ld. SPP has relied upon *NCB Vs. Kashif*, CrI. Appeal No. 5544/2024 decided on 20.12.2024, *Lydia Kabukazi Aloyo Vs. Customs*, 2026 (1) JCC 2019, *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, *Daler Singh Vs. State of Punjab*, 2007 (1) CC Cases (SC) 252, *Customs Vs. Ahmadalieva*, CrI. Appeal No. 312 of 2004 decided on 11.03.2004, *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, *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 and *Madan Lal Vs. State of Himachal Pradesh*.

2.0 Arguments heard. Record perused.

3.0 As per the allegations, on 25.03.2024, the applicant / accused was intercepted by a team of DRI officers. She was produced before the Ld. Magistrate and thereafter, escorted to RML Hospital where she excreted out a total of 123 capsules between 25.03.2024 to 01.04.2024. The said capsules were found to contain, 958.4gms of cocaine hydrochloride.

3.1 The main argument of the Ld. Counsel for the applicant / accused is that the provisions of the Customs Act were not duly complied with and that the applicant was illegally detained. Perusal of record, however, would reveal that the applicant after interception was duly produced before the Ld. Magistrate on 25.03.2024. Copy of orders passed by the then Ld. Duty MM, Patiala House Courts is on record. The then Ld. MM had passed the orders under the Customs Act and directed that the accused be taken to the hospital for screening / scanning and thereafter, for detection as well as removal of capsules, if any from the body of the accused under the supervision of registered medical practitioner. During her stay at the hospital, the applicant /accused excreted out a total of 123 capsules on various dates and separate recovery memos were prepared on each of the said occasions. Separate panchnama was also prepared in this regard.

3.2 Perusal of the record shows that the applicant / accused was apprehended at the airport 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 noted her reply in Spanish language and put her signatures on the notice u/s 50 NDPS Act. It also reveals that the notice u/s 50 NDPS Act was served in English as well as in Spanish language to the accused. So the argument of the Ld. Counsel that she does not understand English language and did not understand the notice u/s 50 NDPS Act does not hold ground as it was served in Spanish also. 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.

3.3 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 25.03.2024 itself and it is only as

per the directions of the Id. MM that the accused was taken to RML Hospital for medical examination.

3.4 As far as the argument of Ld. Counsel for the applicant / accused regarding delay in sending the samples to CRCL 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.”*

4.0 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. The allegations against the applicant / accused are grave in nature. She had concealed and smuggled commercial quantity of cocaine by ingesting and concealing capsules containing cocaine inside her body. There is nothing to suggest that twin hurdles of Sec. 37 NDPS Act have been met. 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

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invalidate the trial or conviction, if otherwise, there is sufficient material. Moreover there is no change in circumstance, since the dismissal of the last bail application of accused vide order dated 10.10.2025. Accordingly, **the bail application of accused Luz Marina Benitez Roselly is dismissed.**

Needless to say that nothing expressed herein above shall tantamount to expression of opinion on merits of the case.

**Application disposed off accordingly.**

**Copy of the order be given dasti.**

Copy of the order be sent to Jail Supdt.

(Ajay Garg)  
Special Judge-NDPS/ASJ (South)  
Saket Courts/04.06.2026