

MHCC020193782023



**IN THE SPECIAL COURT FOR NARCOTIC DRUGS AND
PSYCHOTROPIC SUBSTANCES ACT, 1985, AT GREATER BOMBAY
ORDER BELOW APPLICATION EXHIBIT NO.13**

IN

NDPS SPECIAL CASE NO.2287 OF 2023

IN

ENO.SD/INT/AIU/491/2023-AP 'B'

Ms. Mulingo @ Mulongo Julie Julie,
Age-47 years,
Occupation-Beautician in Hair Salon,
R/at: AV. Cocotier N24 Q/Kauka II C/Kalamu
Kinshasa Cod Democratic Republic of
Congo, P.No.-OP1285020.

.. Applicant/Accused.

V E R S U S

Union of India
Through Intelligence Officer,
AIR Intelligence Unit, CSMI Airport,
Terminal-II, Sahar, Mumbai-400 099.

.. Respondent.

Ld. Advocate Ms. Sheela Gupta for the Applicant/Accused.

Ld. SPP Mr. for the AIU/Respondent is absent.

CORAM : H.H. THE SPECIAL JUDGE (NDPS)

R.M. MISHRA

(Court Room No.42)

DATE : 9th May, 2025.

ORDER

1. This application is filed by the applicant/accused under Section 483 of BharAtiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred as 'BNSS') for grant of bail.

2. Facts of the prosecution case are as under:

.. On 1.7.2023 the applicant/accused was intercepted by the officers of the AIU near the exit gate after she had cleared herself through customs green channel and while she was proceeding towards the exit gate of arrival hall, Terminal T2 at CSMI Airport. The applicant/accused had arrived from N'djili International Airport, Democratic Republic of Congo to Addis Ababa, Ethiopia vide Ethiopian Airlines Flight dated 29.06.2023 and Addis Ababa, Ethiopia to Mumbai through Flight dated 30.6.2023. She was found to be in possession of one sky-blue colour trolley bag of VIP brand as checked-in baggage, one unbranded brown colour duffle bag and one black and red colour ladies handbag. After necessary inquiry and upon examination of her baggage, in the brown colour duffle bag of the applicant/accused, even if, it was emptied, it was found to be unusually heavy. Thus, on being suspicion, when its inner wall was cut opened, the intelligence agency found some white colour powdery substance concealed in the false cavity of the said bag. Thereafter, by apprising the right under Section 50 of the NDPS Act, personal search of the applicant was taken but nothing incriminating was found during her personal search. On being found the applicant in conscious possession of the net weight of 1298 gm Cocaine, necessary panchanama regarding search and seizure of muddemal came to be drawn in the presence of panchas.

3. By this application, the applicant has contended that she is innocent and falsely implicated in this crime. The contraband purported to be Cocaine is less than commercial quantity, therefore, rigors of Section 37 will not be applicable. The applicant has no earlier antecedents. She is permanent resident of Republic of Congo. She is ready to abide the conditions imposed by the court while releasing on bail. She is the sole earning member in her family. The applicant, therefore, prayed for her release on bail.

4. Application is resisted by the prosecution mainly on the ground that the applicant has been found in possession of 1298 gm white colour powdery substance purported to be Cocaine. The applicant/accused was duly apprised of her right of personal search under Section 50 of the NDPS Act while conducting her personal search. The process of the opening of the seized material before the Magistrate was conducted by following the procedure as provided under NDPS Act and proper sampling procedure were followed as per Section 52A of the NDPS Act. There was no undue delay in presenting the samples before the Magistrate. The evidence collected is including CCTV footage and panchanama which clearly establishes her culpability. The applicant is a Foreign National and therefore, there is a risk of her absconding. The applicant failed to fulfill the criteria of Section 37 of the NDPS Act. It is thus, contended that the application is liable to be rejected.

5. During the course of arguments, the learned Advocate for the applicant/accused vehemently submitted that the grounds of arrest of the applicant were not informed to the applicant as well her relatives. The applicant is known with French language only but no any

translator was provided while conducting search, seizure and arrest of the applicant. The applicant is having no antecedents. There is clear cut violation of article 22 of the Constitution. The applicant is lying in the jail since last two years. In support of his submissions, the learned Advocate for the applicant/accused placed reliance on:

i) **Vihaan Kumar Vs. State of Haryana and Another [2025 SCC OnLine SC 269].**

ii) **State Vs. Denis Jauregul Mendizabal [2022 SCC OnLine Del 4549].**

iii) **Suzie Achayo @ Shivonje Vs. State of Punjab [CRA-S-1107-2021 (O & M), dated 14.5.2024, Hon'ble High Court of Punjab and Haryana at Chandigarh].**

6. On the other hand, inspite of granting several opportunities, the learned SPP for AIU/Respondent remained absent. Therefore, in the light of the submissions made by the learned Advocate for the applicant/accused, I have carefully gone through the entire record consisting a complaint, documents and say of the prosecution. I have also considered the observations and ratio laid down in the case laws cited supra.

First of all, it will have to be significant to notice that in this case, charge were framed by my learned Predecessor on 4.10.2024 and on 21.11.2024, compliance was done under Section 294 of Cr.PC. and thereafter, matter proceeded for recording evidence. However, at the stage when the trial in this case was commenced, Bail Application Exhibit-11 came to be filed by the earlier Advocate. During pendency of the said application Exhibit-11, another bail application (present application Exhibit-13) filed by another Advocate. After filing the say/reply Exhibit-13A by the learned SPP, earlier Advocate for the

applicant/accused not pressed the bail application Exhibit-11 which came to be disposed of on 3.5.2025 for want of prosecution and matter was then kept for hearing on subsequent bail application Exhibit-13. All these circumstances indicate that after commencing the trial, aforesaid applications came to be tendered on behalf of the accused instead of proceeding with the trial.

7. While considering the submissions made by the learned Advocate for the applicant, it reveals that much emphasis is laid on non-complying with the provisions of Section 50 of the NDPS Act on the ground that the applicant/accused being conversant with French only, no arrangement was made to translate in apprising her right of personal search under Section 50 of the NDPS Act and for informing her the grounds of arrest which is the violation of the provisions of Article 22 of the Constitution. In this context, I have closely scrutinized the attending circumstances on record. On the basis of averments in the complaint coupled with the panchanama, it reveals that the entire case of the prosecution is based on chance recovery and not on the basis of any prior intentions. Thus, there is no need to go into the question of applicability of the provisions of Section 42 of the NDPS Act.

8. While turning towards the provisions of Section 50 of the NDPS Act, at the cost of repetition, it is already discussed that much has been argued by the learned Advocate for the applicant that the applicant was not apprised her right by calling any translator having knowledge of French language with which the applicant is conversant. However, in this context if the panchanama dated 1.7.2023 is taken into consideration, it can be seen that it is nowhere mentioned that the applicant/accused was conversant only with a French language. Apart

from this, it will be most significant to mention that after the applicant was intercepted from the Airport and after initial inquiry, Smt. Sunita Khamkar, Air Customs Superintendent who was present with two female panchas took search of the baggages of the applicant/accused in which the seized contraband has been recovered. It is thus, apparent that the contraband has been seized from the baggage possessed by the applicant and not from her person in order to attract the provisions of Section 50 of the NDPS Act. Infact, the recovery of contraband has been made from the conscious possession of the applicant. Thereafter, it reveals that the applicant was apprised her right under Section 50 and then her personal search was conducted but nothing incriminating was found during her personal search. Therefore, considering these circumstances, at this juncture, even assuming that the applicant was not properly explained her right in the language known to her and even assuming that there is no proper compliance of the provisions of Section 50 of the NDPS Act, in view of the recovery made from her baggage i.e. in view of the recovery from her conscious possession and not from her person, no question arises of the breach of the provisions of Section 50 of the NDPS Act.

9. So far as the submissions made by the learned Advocate that the applicant was not informed her grounds of arrest nor information of her arrest was given to her relatives is concerned, I have carefully gone through the copies of documents filed by the prosecution below Exhibit-5. At serial No.10 and 11 (page Nos.30 and 31), copy of ground of arrest and memo of arrest is filed on record which bears the signature of applicant/accused. In these copies, it is specifically mentioned by way of grounds of arrest that the applicant has been found in possession of 1298 gm Cocaine which was concealed in the

false cavity of her duffle bag which has been seized under the panchanama dated 1.7.2023 and therefore, she has been committed an offence punishable under the NDPS Act. In the memo of arrest she has been shown to be arrested on 1.7.2023 at 13.00 hrs. It is most significant to mention that not only in the search and seizure panchanama, statement recorded under Section 67 of the NDPS Act, as well as in a copy of grounds of arrest and memo of arrest, the applicant/accused has categorically signed in English by mentioning the date below her signature. Apart from these circumstances, the prosecution agency has also filed first remand order dated 1.7.2023 in which it reveals that on being asked about any complaint of any ill-treatment at the hands of AIU Authority, the applicant/accused is supposed to have informed that she had no any complaint of any ill-treatment. All these circumstances, including the signature and date made in English by the applicant/accused clearly indicates that she is well conversant with English language in which the search and seizure panchanama, grounds of arrest, memo of arrest, statement under Section 67 have been prepared as per her say. All these circumstances shows that the applicant was duly informed the grounds of arrest by the Investigation Agency. Therefore, having regard to the guidelines laid down in **Vihaan Kumar** (supra), I am of the view that the submissions made by the learned Advocate for the applicant that there is non-compliance of the mandatory requirement of Article-22 in view of not informing the grounds of arrest, is devoid of substance.

10. While concluding the aforesaid circumstances, again it would be appropriate to mention that other cases relied upon by the Learned Advocate for the applicant in **Denis Juregul Mendizabal** and **Suzie Achayo @ Shivonje** (supra) stand on different puttings and in these

cases, trial was concluded and Judgments were passed. On the other hand, the applicant has come forward under Section 483 of BNSS, 2023 for grant of bail. In view of aforesaid discussions in foregoing paragraphs, it is already held that the seizure of contraband was made from the baggage i.e. from the conscious possession and not from the person of the applicant/accused while considering the provisions of Section 50 of the NDPS Act. The quantity of contraband seized from the conscious possession of the applicant is 1298 gm Cocaine which is much higher than the commercial quantity as provided under the NDPS Act. Thus, I am of the considered view that the applicant/accused failed to satisfy the rigors of Section 37 of the NDPS Act while seeking her release on bail. Hence, following order is passed:

Order

1. Application Exhibit-13 for grant of bail stands rejected.
2. Application Exhibit-13 in NDPS Special Case No.2287 of 2023 stands disposed of accordingly.



Date : 09.05.2025

(R.M. Mishra)
NDPS Special Judge &
Additional Session Judge,
City Civil & Sessions Court,
Gr. Bombay.

Dictated dictated on Computer: : 09.05.2025
HHJ signed on : 09.05.2025

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”	
UPLOAD DATE AND TIME	10.5.2025/3.24 p.m.
NAME OF STENOGRAPHER (Grade-1)	(Mrs. Pradnya S. Naik)
Name of the Judge (With Court room no.)	Shri R.M.Mishra (C.R. No.42)
Date of Pronouncement of JUDGMENT/ORDER	9.5.2025
JUDGMENT/ORDER signed by P.O. on	9.5.2025
JUDGMENT/ORDER uploaded on	10.5.2025