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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Judgment reserved on: 25.03.2026**Judgment pronounced on: 27.03.2026**Judgment uploaded on: 28.03.2026*+ **BAIL APPLN. 3917/2025****KONAN JACQUES YAO**

.....Petitioner

Through: Mr. Rohan Gupta and Mr.  
Anup Kr. Gupta, Advocates.

versus

**DIRECTORATE OF REVENUE  
INTELLIGENCE**

.....Respondent

Through: Mr. Satish Aggarwala, Sr.  
Standing Counsel and Mr.  
Gagan Vaswani, Advocate**CORAM:****HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****DR. SWARANA KANTA SHARMA, J**

1. By way of the present application, the applicant is seeking grant of regular bail in case bearing no. DRI/DZU/34/ENQ/13/2023, registered at Police Station DRI, DZU, Delhi, for the commission of offence punishable under Sections 21/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 [hereafter '*NDPS Act*'].

2. Briefly stated, the case of the prosecution is that acting upon specific intelligence, a team of officers of the Directorate of Revenue



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Intelligence (DRI) intercepted three passengers, namely, Cynthia Adaobi Chukwuka (a passport holder of Nigeria), Donnatus Chukwuka (a passport holder of Nigeria), and the present applicant, Konan Jacques Yao (a passport holder of Ivory Coast), who had arrived at Terminal-3 of IGI Airport, New Delhi from Addis Ababa on 18.07.2023 at about 01:00 hrs. The said passengers were intercepted while attempting to cross the green channel, as the DRI officers had prior information that they were carrying narcotic substances, either concealed in their baggage or within their bodies. Notices under Section 50 of the NDPS Act were served upon them. Upon suspicion of internal concealment of narcotic substances, the accused persons were produced before the concerned Court on 18.07.2023 itself, and permission was sought for their medical examination. The learned Trial Court allowed the said request. Thereafter, all three accused persons were taken to Ram Manohar Lohia Hospital, where they were examined at the Trauma Centre and subsequently referred to the Department of Radiology. The X-ray examination conducted in the presence of independent witnesses and DRI officers revealed the presence of oval-shaped foreign objects inside the bodies of all three accused persons. They were thereafter admitted to the hospital for observation. During the course of their admission, accused Donnatus Chukwuka excreted multiple capsules containing a white/off-white substance. In total, 84 capsules were recovered from him. From the present applicant, Konan Jacques Yao, 07 such capsules were recovered. No capsules were physically



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recovered from Cynthia; however, as per the medical reports, multiple foreign objects were detected in her abdomen, which she allegedly disposed of by flushing them in the hospital toilet. One of the recovered capsules was opened and tested using the NDPS Field Testing Kit, which indicated the presence of cocaine/methaqualone. All recovered capsules were duly seized, sealed, and documented in accordance with law. It is further the case of the prosecution that during their stay at the hospital, the present applicant exhibited non-cooperative behaviour and resisted supervision by DRI officials. All proceedings were duly recorded in panchnamas prepared at the spot. Upon discharge from the hospital, the medical documents of all accused persons, including discharge summaries and radiological reports, corroborated the presence of foreign bodies in their systems. Statements of the accused persons were recorded under Section 67 of the NDPS Act. The prosecution alleges that all three accused persons were acting in concert and were part of a larger criminal conspiracy involving the smuggling of narcotic substances into India. It is stated that 1848 grams of cocaine was recovered from co-accused Donnatus Chukwuka and 154 grams from the present applicant, totalling 2002 grams of cocaine, which falls within the category of commercial quantity under the NDPS Act.

3. The learned counsel appearing for the applicant, Konan Jacques Yao, submits that no incriminating material was recovered from the personal baggage of the applicant. It is argued that there has been non-compliance with the mandatory provisions of the NDPS



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Act. In this regard, it is contended that despite prior intelligence, the Investigating Officer, Nishi Garg, was not authorised under Section 41(2) of the NDPS Act to conduct the search, seizure, and arrest of the applicant, and that the requirements of Section 42 of the NDPS Act have also not been complied with. It is further contended that Section 43 of the NDPS Act is not applicable to the present case, as the search of the accused persons was conducted at the Customs Preventive Room at IGI Airport, which is a restricted area and not accessible to the general public, and therefore cannot be treated as a “public place” within the meaning of Section 43 of the NDPS Act. The learned counsel further submits that though an order was obtained from the learned Magistrate under Section 103 of the Customs Act for scanning and screening of the accused persons, the X-ray report has not been produced for the purposes of Section 103(6) of the Customs Act. It is also contended that no proper custody order *qua* the accused persons was obtained, which amounts to a violation of the procedure prescribed under Section 103 of the Customs Act, rendering the detention of the accused illegal and violative of Articles 21 and 22 of the Constitution of India. It is further argued that no incriminating material was recovered from the mobile phone of the present applicant to establish any nexus with the co-accused persons. The learned counsel also submits that co-accused Cynthia has already been granted regular bail, and therefore, on the ground of parity, the present applicant is also entitled to be enlarged on bail. It is additionally contended that no audio or videography of



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the search and seizure proceedings was conducted by the DRI officials, nor were any efforts made to procure CCTV footage, despite the alleged recovery having taken place at the highly secured premises of IGI Airport.

4. On the other hand, the learned SPP appearing for DRI/respondent opposes the present bail application and submits that the recovery in the present case was effected from the bodies of the accused persons, who were apprehended at the airport, which is a public place. It is, therefore, argued that Section 43 of the NDPS Act is applicable and not Section 42 of the NDPS Act. It is contended that the accused had concealed capsules containing cocaine within his body, which were subsequently excreted and seized in accordance with law. The learned SPP submits that the quantity of narcotic substance from the present applicant falls within the category of commercial quantity, and thus, the rigours of Section 37 of the NDPS Act are attracted. It is further submitted that during the course of medical observation, 84 oval-shaped capsules were recovered from co-accused Donnatus Chukwuka and 07 oval-shaped capsules were recovered from the present applicant, Konan Jacques Yao, the details of which are reflected in the table below:

| Date and Time of Recovery  | No. of Oval shaped capsules recovered from Donatus Chukwuka. | No. of Oval shaped capsules recovered from Konan Jazques Yao. |
|----------------------------|--|---|
| 18.07.2023 (till 10:00 PM) | 10   | -   |



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|   |    |   |
|---|----|---|
| 18.07.2023 (10:00 PM) to<br>19.07.2023 (9:00AM)   | 31 | 5 |
| 19.07.2023 (09:00 AM) to<br>19.07.2023 (09:00 PM) | 20 | - |
| 19.07.2023 (09:00 PM) to<br>20.07.2023 (09:00 AM) | 06 | - |
| 20.07.2023 (09:00 PM) to<br>21.07.2023 (09:00 PM) | 04 | - |
| 21.07.2023 (09:00 AM) to<br>21.07.2023 (09:00 PM) | 7  | - |
| 22.07.2023 (09:00 AM) to<br>22.07.2023 (09:00 PM) | 2  | - |
| 24.07.2023 (09:00 AM) to<br>25.07.2023 (09:00 AM) | 4  | - |
| 27.07.2023 (09:00 PM) to<br>28.07.2023 (09:00 AM) | -  | 1 |
| 28.07.2023 (09:00 AM) to<br>28.07.2023 (09:00 PM) | -  | 1 |
| Total   | 84 | 7 |

5. This Court has **heard** arguments addressed on behalf of the applicant as well as the respondent/DRI, and has perused the material available on record.

6. In a nutshell, the case of the prosecution is that acting upon specific intelligence, the DRI officials had intercepted the accused persons, including the present applicant, at IGI Airport upon their arrival from Addis Ababa, and upon medical examination, multiple capsules containing narcotic substance, i.e., cocaine, were found concealed within their bodies. The said capsules were subsequently excreted and recovered, and the total quantity of contraband attributed to the present applicant falls within the category of



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commercial quantity i.e. 154 grams of cocaine, while total recovery being 2002 grams of cocaine.

7. Having examined the material placed on record, this Court finds no merit in the contention of the applicant regarding non-compliance of Sections 41 and 42 of the NDPS Act. The learned Trial Court has rightly held that the interception of the accused persons took place at IGI Airport, which qualifies as a “public place” within the meaning of the NDPS Act. In this regard, reliance was placed by the learned Trial Court on decision of this Court in *Santini Simone v. Department of Customs: 2020 SCC OnLine Del 2128*, wherein this Court, after referring to several judicial precedents, held that areas of the airport such as customs counters, immigration areas, and allied zones would fall within the ambit of a public place, and thus, attracting the applicability of Section 43 of the NDPS Act. It is further settled that unlike Section 42, Section 43 of the NDPS Act does not mandate prior recording of information or reasons of belief. In the present case, since the accused persons were intercepted at the airport itself, the provisions of Section 43 of the NDPS Act would govern the field, and therefore, the argument regarding non-compliance of Sections 41 and 42 does not *prima facie* persuade this Court at this stage. Moreover, the specific argument of the learned counsel for the applicant that search of accused persons was conducted in a restricted area of the customs department is also not acceptable, as this Court in *Santini Simone (supra)* also specifically observed that “*the contention that certain areas in the airport cannot*



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*be described as a public place merely because the entry is restricted, was expressly rejected” by Division Bench of this Court in **Utpal Mishra Air Customs Officer, I.G.I. v. Mr. Nicelai Christensen: 1997 SCC OnLine Del 655.***

8. Insofar as the contention regarding alleged non-compliance of Section 103 of the Customs Act is concerned, the same also raises disputed questions of fact, which would require appreciation of evidence and are thus matters for trial. *Prima facie*, the case of the prosecution is supported by the recoveries effected, the medical examination reports, including X-ray findings indicating presence of foreign bodies, and the subsequent recovery of capsules containing narcotic substance. The fact that the quantity recovered from the present applicant falls within the category of commercial quantity further strengthens the prosecution case at this stage.

9. As regards the contention of parity, this Court finds that the same is misconceived. Admittedly, no narcotic substance could be recovered from co-accused Cynthia, whereas 07 capsules containing cocaine, weighing 154 grams, have been recovered from the present applicant. The said quantity falls within the category of commercial quantity, and thus, attracts the rigours of Section 37 of the NDPS Act.

10. Further, insofar as the contention regarding delay is concerned, the Trial Court Record was summoned and perused. The same reveals that the delay in the proceedings cannot be attributed solely to the prosecution, as adjournments were sought on several occasions by



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one or the other accused, including for the purposes of addressing arguments on charge and filing written submissions. At the same time, this Court cannot overlook that the learned Trial Court had, on multiple occasions, adjourned the matter even when the parties were ready to advance arguments on charge, and there was no requirement for the physical presence of the accused for the said purpose. The arguments on charge, in fact, came to be heard over an extended period from July 2024 to December 2025. Such an approach, particularly in cases where the accused are in judicial custody, ought to have been avoided.

11. Be that as it may, at this stage, when the prosecution witnesses are yet to be examined, and considering the recovery effected from the present applicant as well as the manner in which the contraband was allegedly smuggled into India, this Court is of the view that no ground for grant of regular bail is made out.

12. In view thereof, the present bail application stands dismissed.

13. The judgment be uploaded on the website forthwith.

**DR. SWARANA KANTA SHARMA, J**

**MARCH 27, 2026/vc**

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