



IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 1ST DAY OF JULY, 2026
BEFORE
THE HON'BLE MR. JUSTICE S VISHWAJITH SHETTY
CRIMINAL PETITION NO. 1044 OF 2026

BETWEEN:

MR. SAMUEL CHINWEIKE ANOH
S/O REMOND
AGED ABOUT 42 YEARS
R/AT C/O SMT. RETHE MOHAN
NO.6, MUNIYAPPA GARDEN
KADACHANALLUR, ERODE
TIRUCHENGODE TALUK
NAMAKKAL DISTRICT
TAMIL NADU - 638 001
PERMANENT RESIDENT OF
UDI UMUBAI, ENUGU
NIGERIA - 401 010.

...PETITIONER

(BY SRI RAJANNA B.C, ADV.)

AND:

THE UNION OF INDIA
THROUGH THE INSPECTOR OF CUSTOMS
CUSTOMS INTELLIGENCE UNIT (CIU)
AIRPORT & AIR CARGO COMPLEX
BENGALURU - 560 300
REPTD. BY SPECIAL PUBLIC PROSECUTOR.

...RESPONDENT

(BY SRI MADHU N RAO, ADV.)

THIS CRL.P IS FILED U/S 439 CR.PC (FILED U/S 483 BNSS)
PRAYING TO ENLARGE THE PETITIONER/ACCUSED NO-3 ON BAIL IN
O. NO: 62/2021-22, SPL. CASE NO: 1802/2022 OF THE INSPECTOR
OF CUSTOMS, CUSTOMS INTELLIGENCE UNIT (CIU), AIRPORT AND
AIR CARGO COMPLEX, BENGALURU 560 300 FOR THE ALLEGED
OFFENCES PUNISHABLE UNDER SECTION 8(C), 21(C), 22, 23, 28
AND 29 OF NDPS ACT, WHICH IS PENDING ON THE FILE OF HONBLE
XXXIII ADDL. CITY CIVIL AND SESSIONS JUDGE AND SPL. JUDGE
(NDPS), BENGALURU (CCH-33) IN THE ABOVE CASE.





THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S VISHWAJITH SHETTY

ORAL ORDER

1. Accused no.3 in Special Case No.1802 of 2022 pending before the Court of XXXIII Additional City Civil & Session Judge and Special Judge (NDPS), Bangalore(CCH No.33) arising out of O.R.No.62/2021-22 registered by the Inspector of Customs, Customs Intelligence Unit, Bangalore for offences punishable under Section 8(c) R/w Sections 22, 23, 28 and 29 of the NDPS Act is before this Court in this petition filed under Section 483 of BNSS, 2023 seeking regular bail.

2. Heard the learned counsel appearing for the parties.

3. It is the case of the prosecution that the complainant, who is the Customs Officer had received credible information on 15.02.2022 that there are concealments in two shipments, which were lying in the office of M/s. Fedex Express Transportation and Supply Chain Services India Pvt. Ltd., bearing tracking No.775141235765 dated 08.11.2021 from Brussels, Belgium and 815156427306 dated 21.01.2022 from



Chipata, Zambia, which were addressed to Thulasiraman with a declaration as "Half Shaft for Weaving Machines" and "Bed Sheets, Hand Bag, Watch, Clothes". Accused Nos.1 and 2 had arrived in the office of M/s. Fedex Express Transportation and Supply Chain Services India Pvt. Ltd., claiming that the said two shipments belong to them and they had produced print out of the copies of the above referred Airway bills, tracking numbers and when the above referred shipments were opened, it was found that the same contained contraband article allegedly MDMA weighing 4.581 kilograms and contraband article allegedly heroin weighing 1.002 kilograms. Accused Nos.1 and 2 who had arrived in the courier office for the purpose of collecting the aforesaid shipments were arrested and contraband article found in the shipment were seized under panchanama and subsequently, said accused were arrested and were produced before the jurisdictional Court and remanded to judicial custody. Based on the confession statement of accused nos.1 and 2 who were arrested in the present case, the petitioner was arraigned as accused no.3 in the present case and he was subsequently, arrested on 19.02.2022 and remanded to judicial custody. After completing investigation,



complaint was filed as against accused nos.1 to 3 for the aforesaid offences. Bail application filed by the petitioner before the trial Court in Crl.Misc.No.10632 of 2025 was rejected on 12.12.2025. It is under these circumstances, he is before this Court.

4. Learned counsel for the petitioner submits that there is no seizure of any contraband article from the possession of the petitioner in the present case. He has been arraigned as an accused based on the confession statement of accused nos.1 and 2. Accused nos.1 and 2, have been granted regular bail by this Court in Criminal Petition No.13078 of 2024 and Criminal Petition No.7029 of 2025. He submits that, petitioner is in custody in the present case for the last more than four years and the case is at the stage of recording further chief-examination of PW1 since the year 2023 onwards. He accordingly, prays to allow the petition.

5. Per contra, learned counsel appearing for the respondent who has filed his statement of objection has opposed the petition. He submits that, petitioner has played an



active role in the present case and he is a person with similar criminal antecedent. He also submits that petitioner is a foreign national having no valid documents to stay in India. Therefore, even if he is enlarged on bail, in view the judgment of the Hon'ble Supreme Court in the case of **FRANK VITUS V NARCOTICS CONTROL BUREAU AND ORS - CRIMINAL APPEAL NOS.2814-2815 OF 2024** and the judgment of this Court in the case of **BABUL KHAN & ANR V. STATE OF KARNATAKA & ANR - CRIMINAL PETITION No. 6578 of 2019**, the petitioner has to be sent to the detention centre.

6. It is not in dispute that contraband articles seized in the present case are only from the possession of accused nos.1 and 2 and it is also not in dispute that based on the confession statement of the said accused, the petitioner who allegedly had conspired with the accused persons for shipment of the contraband articles was subsequently arrested in the present case on 19.02.2022. Accused nos.1 and 2 were arrested in the present case on 16.02.2022. Accused No.2 - Saravana Kumar was granted regular bail by this Court in Criminal Petition No.13078 of 2024 disposed of on 14.02.2025 considering the



inordinate delay in trial and his period of incarceration. Subsequently, accused no.1 - Thulasiraman was granted regular bail by the coordinate bench of this Court in Criminal Petition No.7029 of 2025 disposed of on 20.05.2025 also on the ground of delay in trial and his period of incarceration.

7. The case before the trial Court, as on the day when accused no.1 and 2 were granted regular bail by this Court, was at the stage of further examination of PW1. This Court while granting regular bail to accused no.2 in Criminal Petition No.13078 of 2024 had taken note of the fact that though examination-in-chief of PW1 had commenced on 26.10.2023, as on the date of disposal of Criminal Petition No.13078 of 2024, the trial case was at the very same stage. It is not in dispute that even as on this day, the stage of the case before the trial Court is at the stage of recording further evidence of PW1.

8. In the case of ***Chitta Biswas Alias Subhas vs. State of West Bengal*** reported in ***2020 SCC OnLine SC 1536***, the Hon'ble Supreme Court taking into consideration



that the accused was in custody for a period of one year seven months and there was no sufficient progress in trial, without expressing any opinion on merits and demerits of the case, has granted regular bail to the accused.

9. In the case of ***Nitish Adhikary alias Bapan vs. State of West Bengal*** reported in ***2022 SCC OnLine SC 2068*** in a case where charge sheet was filed for the offences punishable under Sections 21(c) and 37 of the NDPS Act and accused was in custody for a period of one year seven months, the Hon'ble Supreme Court has granted regular bail on the ground that trial is still in the preliminary stage, as only one witness was examined.

10. The Hon'ble Supreme court in the case of ***MOHD. MULSIM ALIAS HUSSAIN V. STATE (NCT OF DELHI) - 2023 SCC ONLINE SC 352*** paragraph no.21 has observed as follows:-

"21. The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused's guilt may be proved.



The judgments of this court have, therefore, emphasized that the satisfaction which courts are expected to record, i.e., that the accused may not be guilty, is only prima facie, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation as held in Union of India v. Rattan Malik). Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (ref. Satender Kumar Antil supra). Having regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail ."

11. In the case of **JAVED GULAM NABI SHAIKH v. STATE OF MAHARASHTRA AND ANOTHER - 2024 SCC OnLine SC 1693** at paragraph No.19, the Hon'ble Supreme Court has observed as follows:

"19. *If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is*



serious. Article 21 of the Constitution applies irrespective of the nature of the crime".

12. Petitioner is in custody in the present case for the last more than four years. Out of the 8 charge sheet witnesses as on this date, not even 1 charge sheet witness has been examined completely. Under the circumstances, I am of the view that without expressing any opinion on the merits and demerits of the case, petitioner's prayer for grant of regular bail needs to be answered affirmatively solely on the ground of his period of incarceration.

13. It is not in dispute that petitioner who is a foreign national has no valid document to stay in India. The Hon'ble Supreme Court in the case of **FRANK VITUS** (supra) in paragraph no.8, has observed as follows:-

"8. In addition to what we held by judgment and order dated 08th July, 2024, we issue the following directions:

(i) While granting bail to a foreigner within the meaning of the Act, the concerned court shall issue direction to the State or prosecuting agency, as the case may be, to immediately communicate the order granting bail to the concerned Registration Officer appointed



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under Rule 3 of the Rules who, in turn, shall communicate the order to all concerned authorities including the Civil Authorities. If such information is furnished, it will enable the authorities under the Act, the Rules and the Order to take appropriate steps in accordance with the law; and

(ii) A copy of this order shall be forwarded to Registrar Generals of all the High Courts, who in turn will forward the copies of the order to all the criminal Courts in the respective States".

14. Similar view has been taken by the Co-ordinate Bench of this Court in the case of **BABUL KHAN** (supra) Criminal Petition No.6578 of 2019 disposed of on 19.05.2020 and the guidelines laid down in the said case reads as follows:-

"GUIDELINES

(1) As soon as the offence under Foreigners Act and other Laws is detected and there is a strong prima facie material to show that the detected person is a foreign national, and if he has no Passport or Visa, or if the Visa is expired, and he has no right to stay in Indian Territory, proceedings shall be immediately started to deport him to his nation, without un-necessary delay, from the date of registration of FIR against such person.



(2) The jurisdictional police have to immediately take steps to inform the concerned competent authorities to initiate proceedings to deport such foreign national to his mother country *visa-a-vis* other competent authorities also share the details of such person amongst themselves and concerned jurisdictional Court.

(3) If the Court refuses to grant bail to those persons (foreign nationals) in any criminal case, the Court shall keep such person in regular jail, till the disposal of the case.

(4) If for any reason the Court grants bail including anticipatory bail, in any criminal case where the offender is a foreign national, and the offences are under the Foreigners Act and/or also under any other Laws for the time being in force, and their Visa is cancelled or lapsed, or they have no Passport, or they are illegal migrants, then the Courts shall specifically order to keep them in detention centers, unless the competent authority has passed any order under section 3(2)(a) to (f) of Foreigners Act, 1946, or till further



orders of the court or till they are deported to their mother country.

(5) If the case registered against the foreign nationals, ended in conviction, they shall be ordered to be kept in regular prison of the State till they serve their sentence, and after serving the sentence, they shall be kept in detention centers till, they are deported to their country.

(6) If the case ends up in discharge, release of the accused or acquittal, and their nationality is in dispute before the competent Tribunal, they shall be ordered to be kept in detention centers till they are deported to their country unless they have any right or otherwise entitled to remain in India, or the competent authority has passed any orders under section 3(2)(a) to (e) of Foreigners Act 1946, the acquittal, discharge or release of the accused is no bar for the concerned competent authorities to question the nationality of that person before the competent Tribunal.

(7) The Public Prosecutors, the defence Counsel and the Courts shall make all their efforts to expeditiously deal with such cases by giving priority, for



its early disposal, so as to enable other competent authorities to take appropriate steps under the facts and circumstances of each case for deportation of such foreign national (accused) as early as possible. The Court may also if permissible under law, and applicable to the facts and circumstances of a case may invoke sections 265A to 265L under chapter XXI (A) of Code of Criminal procedure, after following due procedure.

(8) As far as possible where a foreign national is involved in a case, the courts shall make their endeavor to record evidence and write the judgment in English Language, if the accused in such case is not conversant with the local language.

(9) The Central Government and the State Governments shall take all necessary steps to establish as many as necessary Detention Centers, at Cities, Districts and Taluka places as per the detention Center Manual referred to in this judgment, with all necessary basic facilities, as per the detention centre manual, as per the directions and guidelines of the Hon'ble Apex ***Court in the case of Upadhyaya Vs State of A.P. and others reported in (2017)15 SCC 337***, so as to



keep the foreign nationals, till their deportation whenever they are ordered to be kept in detention centers by competent authorities or by the Courts.

(10) In case, the accused/foreign national is a woman or a woman having a child or the child itself, the competent authorities, including jail authorities, detention centers, and the Courts and Juvenile Justice Boards have to follow the Guidelines of the Hon'ble Apex Court laid down in *Upadhyaya's* case noted supra; in addition to the provisions under the Prisons Act as well as Prisons Rules, and Juvenile Justice Act and Rules strictly and meticulously in their letter and spirit.

(11) If a mother who is a foreign national, is in custody and having infant *below* the age of six years or up to six years, the court may order the child to accompany the mother during her custody. If, either of parents got arrested, then the custody of the child may be given to the other parent who is not arrested. If both the parents are arrested and they are in custody in same or in some other case, court may order custody of children to their close relative or to Government shelter home, or to any other organization recognized or



undertaking of the government where government or concerned authorities can monitor the well being of the child, as per Juvenile Justice (Care and Protection of Children) Act, 2015 and Rules.

(12) If a *foreign* national is convicted by the Court, and any application for parole is made, the jail authorities have to take in to consideration the conditions enumerated under Section 4 of the Foreigners Act, 1946, in addition to the Prisons Act and Rules.

(13) If a Foreign National is found to be an illegal migrant and not a citizen of India, and has been involved in criminal offences under other law of the land for the time being in force, apart from Foreigners Act, the State Government or the Central Government as the case may be, take immediate necessary steps by exercising their discretion after applying their mind to the facts and circumstances of the case, if necessary and if the circumstances warrants, if the said offences are not heinous or anti-social, or not punishable with imprisonment for more than three years, or with fine only to withdraw those cases under Section 321 of Cr.PC., so as to enable the concerned authorities to take



necessary steps to deport such persons to their mother country, as expeditiously as possible.

(14) The State Legal Services Authority, District Legal services Authorities, and Taluka Legal Services Committees, shall make a periodical visit to the jails and Detention centers to ensure and satisfy itself that the concerned authorities have taken necessary steps to implement the directions issued by the Hon'ble Apex Court in ***Upadhyay's*** case and also the Detention Center Manual, so as to take appropriate action to inform the concerned authorities to rectify their mistakes and also the Legal Services Authorities suo-motu can take steps in accordance with law to get the mistakes or errors rectified on the legal side.

(15) The Central Government and the respective State Governments shall often revise the Detention Center Manual and also the Prisons Act and Rules based on the need of the hour to bring necessary changes, so as to effectively and efficiently implement the very object of such Manual and laws.

(16) The Central Government, the State Government, the Karnataka State Legal Services



Authority, Karnataka Judicial Academy and Police Academy in the State shall take appropriate necessary swift action to sensitize all the stake holders, Judges, Prosecutors, Police Officers, Custom and Immigration Officers (FRRO-FRO), Jail Authorities and Officers delegated in Detention Centers, in this regard".

15. Under the circumstances, I am of the opinion that petitioner's prayer for grant of regular bail needs to be answered affirmatively subject to appropriate conditions. Accordingly, the following:-

ORDER

Criminal petition is allowed.

The petitioner is directed to be enlarged on bail in Special Case No.1802 of 2022 pending before the Court of XXXIII Additional City Civil & Session Judge and Special Judge (NDPS), Bangalore(CCH No.33) arising out of O.R.No.62/2021-22 registered by the Inspector of Customs, Customs Intelligence Unit, Bangalore for offences punishable under Section 8(c) R/w Sections 22, 23, 28 and 29 of the NDPS Act, subject to the following conditions:



a) The petitioner shall execute a personal bond for a sum of Rs.1,00,000/- (Rupees One Lakh only) with two sureties for the likesum, to the satisfaction of the jurisdictional Court;

b) The Trial Court is hereby directed that, at the time of releasing of the petitioner on bail, the Competent Authorities shall be informed to detain them in any of the Detention Centers in Bangalore or any place nearby Bangalore City, till the trial is concluded.

c) It is also made clear that, under Section 3(2) of the Foreigners Act, if the Competent Authority feels that, by means of imposing restrictions on the movements of the petitioner by taking bond with or without surety for the observance or as an alternative to the enforcement of any of the prescribed or specific restrictions or conditions can control their movements, such orders may be passed by the Competent Authority with intimation to the Court.

d) The petitioner shall appear regularly on all the dates of hearing before the Trial Court unless the Trial Court exempts his appearance for valid reasons;

e) The petitioner shall not directly or indirectly threaten or tamper with the prosecution witnesses;



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f) The petitioner shall not involve in similar offences in future.

Sd/-
(S VISHWAJITH SHETTY)
JUDGE

NMS
List No.: 1 SI No.: 41