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

% ***Date of Decision : 06.11.2026***

\# **CNR No. DLHC010140502026**

\+ **BAIL APPLN. 1358/2026**

SHADRACH NWOGBO .....Petitioner

Through: Mr. Meghan, Advocate.

versus

CUSTOMS .....Respondent

Through: Mr. PuneettSinghal, SPP and Mr. P. SaiLeshanth, Advs.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J. (*ORAL*)

1. The present petition has been filed by the petitioner, a foreign national holding a passport of Republic of Liberia and stated to be a resident of Lagos, Nigeria, seeking regular bail under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS') in SC No. 159/2025 arising out of CASENO. FILE NO: VIII(AP)(10) P&I/ 5096-B/ ARRIVAL/ 2024, a complaint filed by the respondent/Customs for offences under the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act'), pending before the Special Judge, NDPS-02, Dwarka Courts, New Delhi.

2. The Special Judge,*vide* order dated 09.03.2026, dismissed the bail application, being I.A. No. 1/2026 in SC No. 159-2025, filed by the petitioner.

3. The factual conspectus of the case is that on 07.09.2024, the petitioner

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arrived at IGI Airport, Delhi (T-3) from Dubai. The *Panchnama* recorded that the customs officers, acting on the basis of specific intelligence, intercepted the petitioner and scanned his baggage through X-ray and asked him to pass through the Door Frame metal detector. His baggage X-ray and the metal detector revealed nothing suspicious. The first recovery took place in the customs preventive room, at the airport itself, where the petitioner ejected 28 capsules.

4. The *Panchnama-1* further records that the petitioner admitted having ingested intestine capsules containing narcotics and stated that more were inside his body. It is recorded that the petitioner willingly consented for appropriate medical procedures for their ejection. It is pointed out that *Panchnama*-1 ran from 06:30 PM to 08:30 PM on 07.09.2024 (as recorded in the *Panchnama* itself). A Notice under Section 103 Customs Act, 1962 was issued on 07.09.2024. The petitioner was thereafter taken to Safdarjung Hospital where he ejected 56 more capsules on 08.09.2024 and 09.09.2024. The same is recorded in the *Panchnama* 2 - 6 and in total, 84 capsules were recovered and the white powder contained in them weighed around 1660 grams (net) and tested positive for cocaine.

5. The petitioner was discharged from the hospital at about 17:15 Hrs on 10.09.2024 and brought to the airport. Thereafter, the petitioner was formally arrested on 11.09.2024 at about 16:00 Hrs. He was produced before the Trial Court on the evening of 11.09.2024

6. In the order dated 09.03.2026, passed by the learned Special Judge held, it was recorded as under:

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A bare reading of Section 103 (8) of Customs Act makes it clear that if the accused voluntarily admits that she has secreted some contraband inside her body and further voluntarily submits herself for necessary action to bring out those goods, then there is no requirement to produce the accused before the Magistrate for obtaining necessary permission.

Since the accused had already admitted having concealed narcotic drugs inside her body and has submitted for proper medical procedure, there was no need for the IO to seek permission of the court for conducting medical examination of the accused or further medical procedure to bring out those capsules.

Ld. Counsel for the accused has relied upon the consent of accused as mentioned in the notice under section 103 Customs Act and stated that the accused had merely submitted herself for X-ray of her body to check presence of narcotic substance but had not admitted having concealed any narcotic nor agreed for her admission in the hospital. It is a matter of record that the accused had already ejected 28 capsules at the Airport and hence, she could not have said that she had not concealed anything inside her body. Mere fact that that admission of the accused having concealed more capsules is not recorded in her own handwriting would not be sufficient to conclude that she never gave any such consent. Moreover, seizing IO Mathungam T Shimray and the punch witnesses are yet to be examined, who would be the best witnesses to depose, whether and when did the accused gave her consent regarding her admission in the hospital.

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As per discharge summery, the accused remained admitted in the hospital from 08.09.2024 to 10.09.2024 under medical supervision where she discharged more capsules containing narcotic drugs which itself shows that she was in conscious possession of the drugs concealed by her inside her body and hence it cannot be stated that there was any violation of Section 103 Customs Act.

The next ground taken by the Ld. Counsel for the applicant/accused that the accused was not produced before the Ld. Magistrate for within 24 Hrs of her discharge from the hospital.

In the present case, the accused was discharged on 10.09.2024 and the Panchnama dated 11.09.2024 proceedings concluded at 11:00 on 11.09.2024 and thereafter the accused was arrested on 11.09.2024 at 16:00 HRs and presuming the same to be the time when the accused was detained by customs officers, accused was produced before the Ld. Court on 11.09.2024 in the evening is not beyond 24 hours of such detention. It can, therefore, be concluded that there was no illegal detention of the accused in the present case and hence the accused is not entitled to the relief of bail merely on the ground of illegal detention.

7. It is in the aforesaid context the present petition has been filed.

8. Learned counsel for the petitioner made elaborate submissions on the previous date of the hearing. The same are duly taken note of in the order dated 03.11.2026, which reads as under:

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2. The petitioner submits that the case of the petitioner is squarely covered by the dicta laid by this Court in ***Kitoko Ngiembo Alain v. Customs*, 2026:DHC:1338**. In particular, reliance is placed on paragraph 21 thereof, which reads as under:

> *"21. Herein, admittedly, 19 capsules had been recovered immediately after the interception, when the applicant was taken to the toilet of IGI Airport itself. The contraband contained in 19 capsules, suspected to be cocaine, was seized, and thus offence stood revealed, then and there. In such a situation, the applicant should have been arrested immediately and produced before the Court, even if further recovery was to be affected. Thereafter, Customs, as per order of the Court, could have taken him to hospital for further easing out of capsules. In case, delay in hospitalization had any potential of resulting in health-hazard for the applicant, remand could have taken at the hospital also, by making appropriate request to the Court to come to the hospital for said purpose. Thus, applicant was, apparently, detained without any authorization, particularly when part-recovery had already taken place at Airport and offence stood revealed. Respondent cannot be absolved merely on the pretext that formal arrest was later. Thus, palpably, the applicant remained in illegal custody of Customs from the date of interception till 25.02.2022."*

3. The petitioner also relies upon the judgment of the Coordinate Bench of this Court in ***Habiob Bedru Omer v. Customs*, 2025:DHC:4870**. In particular, reliance is placed on paragraph 27 and 28 thereof, which read as under:

> *"27. In the present case, admittedly, the documents of the respondent shows that there was specific intelligence/prior information with regard to the arrival of the present applicant with the contraband. It is, however, the case of the respondent in the complaint filed before the learned Special Court that the applicant was intercepted on the basis of suspicion/profiling. The sequence of events and record would reflect that from the very interception, the respondent had reasons to believe that the applicant was carrying the contraband recovered. In these circumstances, it was incumbent upon the concerned Officer to comply with the provisions of the NDPS Act. Admittedly, there has been no such compliance and the respondent proceeded to detain the applicant without complying with the aforesaid procedure. The respondent was bound to comply with the aforesaid provisions from the time the applicant was intercepted at the IGI Airport. In any case, when the first set of capsules were seized by panchnama dated 21.05.2023, the respondent was bound to act in accordance with the provisions of the NDPS Act. It is pertinent to note that the report under Section 57 of the NDPS Act was sent only on 26.05.2023.*
>
> *28. The applicant was in the continuous custody of the respondent from 21.05.2023 till 26.05.2023 without any authorisation. "Handing Over" and "Taking Over" memos annexed with the complaint leaves no manner of doubt that the custody of the applicant was being transferred from one Officer to the other on the basis of the rotational duties. Thus, in the opinion of this Court, such custody without any authority and without producing him before the concerned Magistrate or Special Court within 24 hours in accordance with law is completely illegal. Even if the applicant was under medication for the procedure being carried out, the same cannot be a ground to keep him in custody. Magistrates exercising power of remand or otherwise in respect of persons in hospital is not unheard of and well recognised procedure in law."*

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9. Learned counsel for the respondent/Customs submits that the petitioner was intercepted on 07.09.2024. It is pointed out that the *Panchnama* 1 was concluded that evening. It is submitted that the petitioner was thereafter hospitalised and was discharged on 10.09.2024. It is submitted that the time so taken does not amount to delay in production. It is urged that until the nature of the contraband was ascertained, the petitioner could not have been arrested. It is further submitted that the recovery is in far excess of the commercial quantity. It is emphasised that the petitioner consented to the removal of capsules, and therefore, Section 103(8) of the Customs Act applies.

10. Learned counsel for the respondent submits that the petitioner was submitted to hospital to ensure the safety of his life and the period may not be counted as detention period.

11. No doubt, the allegations are serious. At the outset, it is noticed that in the factual conspectus of the present case, the judgment of a coordinate Bench of this Court in case of ***Kitoko Ngiembo Alain vs. Customs***, **2026:DHC:1338**, has a direct bearing on the facts and circumstances of the present case. In the said case, in a similar conspectus, it was observed as under:

> *"21. Herein, admittedly, 19 capsules had been recovered immediately after the interception, when the applicant was taken to the toilet of IGI Airport itself. The contraband contained in 19 capsules, suspected to be cocaine, was seized, and thus offence stood revealed, then and there. In such a situation, the applicant should have been arrested immediately and produced before the Court, even if further recovery was to be affected. Thereafter, Customs, as per order of the Court, could have taken him to hospital for further easing out of capsules. In case, delay in hospitalization had any*

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potential of resulting in health-hazard for the applicant, remand could have taken at the hospital also, by making appropriate request to the Court to come to the hospital for said purpose. Thus, applicant was, apparently, detained without any authorization, particularly when part-recovery had already taken place at Airport and offence stood revealed. Respondent cannot be absolved merely on the pretext that formal arrest was later. Thus, palpably, the applicant remained in illegal custody of Customs from the date of interception till 25.02.2022."

12. During the course of hearing, learned counsel for the petitioner has also relied upon the judgment of the Supreme Court in ***Sri Sujit Das and Ors. Etc. vs. Union of India***, **2026 INSC 1195**, decided on 05.11.2026 wherein it has been heldthat the period of 24 hours stipulated under Article 22(2) of the Constitution of India commences from the moment a person is detained and his liberty is curtailed, and not from the time when his formal arrest is recorded. The Court observed the following:

"58. …… The key expression appearing in clause (2) of Article 22 is 'arrested and detained in custody'. What is the meaning of this expression? Does it mean that the two crucial words appearing in this expression, 'arrest' and 'detain', should be assigned separate meanings or they mean one and the same thing. It is important to note that the expression is conjunctive and not disjunctive. Had it been disjunctive, two separate meanings could have been assigned to the two words. But the expression being joint and conjunctive, the two words appearing therein would mean one and the same thing. This is because the Constitution does not recognize any detention dehors arrest. Thus, the prescription of 24 hours time period would commence the moment a person is detained by the arresting authority suspecting him to have committed an offence, when his liberty is effectively curtailed. To that extent, the words appearing in clause (2) of Article 22 i.e. 'arrested' and 'detained' are synonymous. Any attempt to draw an artificial distinction between 'arrest' and 'detention' would dilute or negate the fundamental protection guaranteed by the Constitution under clause (2) of Article 22. Such an endeavour should be avoided. We must adopt that

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12:18:51

interpretation which enhances and furthers the constitutional objective."

13. In the present case, it is evident that the offences stood revealed on 07.09.2026 itself. In terms of the *dicta* laid down in ***Kitoko Ngiembo Alain*** (supra), the petitioner should have been arrested and produced before the Court upon the initial recovery made at the airport itself even if further recovery was to follow. In that case, it was also noticed that remand could have been taken at the hospital and the Customs cannot be absolved merely because the formal arrest was recorded later. Further, it is evident from the *Panchnamas* that the petitioner was in continuous control of the customs officers from 07.09.2024 onwards and he was produced before the Trial Court only on the evening of 11.09.2024, i.e., well beyond 24 hours from the time the accused was first detained.

14. The contention of the learned counsel for the respondent that the petitioner could not have been arrested until the nature of the contraband was ascertained, cannot be accepted, in view of the mandate of Article 22(2) of the Constitution of India as explained in ***Sri Sujit Das and Ors. Etc. (supra)***, wherein it was held as under:

"43. That apart, as we have indicated in the cases of AryamanPattnayak and Kannan, here also the focus and thrust of the learned Judge in trying to distinguish between detention and arrest is not only misplaced but unwarranted as well. As already noted supra, compliance with the procedural formalities of the NDPS Act and the Rules of 2022 does not in any manner prevent the arresting authority from producing the detainee before the magistrate within the constitutionally prescribed time limit of 24 hours. The only exception the Constitution itself provides is the time necessary for the journey from the place of arrest to the court of the magistrate. Article 22(2) does not sanction exclusion of the time taken for

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enquiry and investigation before the arresting authority could effect arrest of the detainee. This is beyond the mandate of Article 22(2) of the Constitution. Article 22(2) does not sanction creation of any buffer zone where the liberty of an individual is curtailed for investigating purposes but not formally shown as arrested. Creation or contemplation of such buffer zone is unconstitutional. There cannot be any suspension or keeping in abeyance of the constitutional safeguards provided under clause (2) of Article 22 save and except what is provided thereunder. Therefore, the declaration that the period of 24 hours for the purposes of Article 22(2) commences from the completion of such search and seizure and only from the time of arrest recorded by the arresting authority is not only unsustainable in law but is entirely unconstitutional. At the cost of repetition, we assert that whether it is Section 67 of the NDPS Act or Rule 3 of the Rules of 2022, there is no statutory injunction preventing the detaining authority from producing the detainee before the magistrate within 24 hours of such detention. Therefore, the view taken by the learned Judge that the 24 hours period commences upon only formal arrest and not during antecedent detention necessitated by statutory procedure of seizure and inventory is contrary to the constitutional mandate of clause (2) of Article 22 read with Section 58 BNSS (Section 57 CrPC) and does not lay down the correct law on this point.

XXX XXX XXX

69. In the circumstances, we would like to summarize our conclusions as under: .....

(iii) while computing the 24 hours deadline, no other time period is permitted to be excluded therefrom except the time necessary for the journey from the place of arrest to the court of the magistrate;"

15. Article 22(2) admits of no exclusion for the time taken to complete the inquiries before a formal arrest.

16. Insofar as the reliance placed by the respondenton section 103(8) of the Customs Act is concerned, it is noticed that the said provision does not speak of production under Article 22(2) of the Constitution of India of a person from

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whom contraband has already been seized and who was held by the customs officers.

17. The said sub-section only dispenses with the requirement of producing before the Magistrate, for an order of screening/X-ray under Section 103 of the Customs Act, a person who admits that goods liable to confiscation are secreted inside his body and who voluntarily submits himself for suitable action for bringing out such goods. It does not dilute the constitutional mandate of Article 22(2) of the Constitution of India, which operates the moment a person is detained. It is also pointed out that the petitioner has been in custody for about two years and two months, and only 8out of 23 witnesses have been examined so far. There is no reasonable prospect of the trial being concluded any time soon. In this regard, it has been observed by the Supreme Court in ***Mohd. Muslim @ Hussain v. State (NCT of Delhi)***, (2023) 18 SCC 166 as under:

> **20.** In cases where bail is sought, the court assesses the material on record such as the nature of the offence, likelihood of the accused cooperating with the investigation, not fleeing from justice : even in serious offences like murder, kidnapping, rape, etc. On the other hand, the court in these cases under such Special Acts, has to address itself principally on two facts : likely guilt of the accused and the likelihood of them not committing any offence upon release. This Court has generally upheld such conditions on the ground that liberty of such citizens has to—in cases when accused of offences enacted under special laws—be balanced against the public interest.
>
> **21.** A plain and literal interpretation of the conditions under Section 37 (i.e. that court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special

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conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

22. 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, emphasised 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 Mallik*[22]). 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 436-A which is applicable to offences under the NDPS Act too (ref. *Satender Kumar Antil*[19]). 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.

23. Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable. Jails are overcrowded and their living conditions, more often than not, appalling. According to the Union Home Ministry's response to Parliament, the National Crime Records Bureau had recorded that as on 31-12-2021, over 5,54,034 prisoners were lodged in jails against total capacity

of 4,25,069 prisoners in the country[23]. Of these 1,22,852 were convicts; the rest 4,27,165 were undertrials.

18. It is also noticed that in ***Union of India v. Chidiebere Kingsley Nawchara***, **2026 SCC OnLine SC 1585**, the Supreme Court has held that special statutes cannot become vehicles of indefinite detention. It was further emphasised that the constitutional guarantee personal liberty and statutory

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restriction must be considered in harmony. The said judgment has also been taken note of in the judgment of the coordinate Bench of this Court in ***John Seruwu vs. Customs***, 2026:DHC:9779, and the Court noted as under:

> 9. The position has also since been considered by the Supreme Court in ***Union of India v. Chidiebere Kingsley Nawchara***[10]. After referring to the decisions governing bail under the NDPS Act, including *Sukhwinder Singh*, the Supreme Court observed that Article 21 considerations remain, but cannot be considered independent of the statutory rigours. It further held that special statutes cannot become vehicles of indefinite detention, while emphasising that the constitutional guarantee of personal liberty and the statutory restrictions must be considered in harmony. The present application must, therefore, be examined on its own facts, including the prosecution material, the period of incarceration and the progress of trial.

19. Considering the totality of the circumstances, the bail application is, accordingly, allowed. The Applicant shall be released on regular bail upon furnishing a personal bond in the sum of INR 50,000/- with two sureties of the like amount, to the satisfaction of the Trial Court/Duty MM, subject to the following conditions:

(i) Before his release, the Applicant shall furnish his complete and verifiable residential address in Delhi, along with his contact particulars. He shall reside at the said address during the pendency of the trial and shall not change his residence without prior permission of the Trial Court. The investigating agency shall physically verify the address within three days of its disclosure and place the verification report before the Trial Court prior to his release.

(ii) The Applicant shall furnish sureties in accordance with the

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12:18:51

directions issued in ***Chidiebere Kingsley Nawchara***(supra). The identity, address and financial capacity of the sureties shall be verified in accordance with the procedure contemplated in the said judgment. Such verification shall be completed within three days, and the verification reports shall be placed before the Trial Court prior to the Applicant's release. A lien or charge equal to the amount of each surety bond shall be created over the property furnished by the respective surety. If, despite sufficient efforts, the Applicant is unable to arrange two sureties, the Trial Court may relax this requirement by a written order recording reasons.

(iii) The Applicant shall deposit his passport, including any expired passport in his possession, with the Trial Court before his release. If the passport is already in the custody of any authority, the IO shall ensure that it is placed before the Trial Court. If the Applicant does not possess or is unable to produce his passport, he shall disclose the circumstances and its whereabouts, if known, by way of an affidavit. He shall not leave India without prior permission of the Trial Court.

(iv) The Applicant shall register with the Foreigners Regional Registration Office ["FRRO"] within one week of his release and communicate such registration in writing to the IO and the Trial Court.

(v) The Applicant shall not leave the National Capital Region without prior permission of the Trial Court. He shall mark his presence once every month at the police station having jurisdiction over his verified place of residence, at a time specified by the officer in charge.

(vi) The Applicant shall furnish an operational Indian mobile

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12:18:17

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12:18:51

number to the IO and the Trial Court within one week of his release. He shall keep the number active and accessible at all times. Any change in the number or other contact particulars shall be promptly communicated to the IO and the Trial Court.

(vii) The Applicant shall appear before the Trial Court on every date of hearing, unless exempted.

(viii) The Applicant shall, within one week of his release, file an affidavit before the Trial Court disclosing his source of income or funds in India and the particulars of all bank accounts, if any, maintained by him in the country.

(ix) The IO shall, through written communication, inform the Embassy of the Republic of Liberia of the Applicant's involvement in the present case and his release on bail. A copy of this order shall also be forwarded to the concerned FRRO and immigration authorities for information and necessary action, if any, in accordance with law.

20. The Trial Court shall ensure compliance with the applicable directions in ***Chidiebere Kingsley Nawchara***(supra) while accepting the bail bonds and verifying the sureties. Any breach of the conditions imposed herein shall entitle Customs to seek cancellation of bail, in accordance with law. The Trial Court shall endeavour to conclude the proceedings expeditiously. Both sides shall extend their cooperation in that regard.

21. The *prima facie* observations made in this order are confined to the consideration of the present bail application and shall not influence the determination of the case on merits.

22. The bail application stands disposed of in the above terms.

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23. Copy of this order be communicated to the Trial Court and the concerned Jail Superintendent, for necessary information and compliance.

SACHIN DATTA, J

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