

**2026 LiveLaw (SC) 278**

**IN THE SUPREME COURT OF INDIA**

**J.B. PARDIWALA; J., K.V. VISWANATHAN; J.**

**Petition for Special Leave to Appeal (Crl.) No.2725/2026; 18-03-2026**

**THE CUSTOMS versus FARIDAH NAKANWAGI**

**Bail – Foreign Nationals – Article 21 of the Constitution of India – Financial Constraints in furnishing Surety –The Respondent, a 32-year-old Ugandan national, was granted bail by the High Court on 15.09.2025 in a case involving the NDPS Act - Despite the Trial Court reducing the surety amount progressively from ₹1,00,000 to ₹25,000, the accused remained in Tihar Jail for months due to her inability to furnish a solvent surety - Held: Article 21 of the Constitution, which protects the right to life and personal liberty, applies equally to foreign nationals prosecuted in India - Once an accused has established a case for bail, financial difficulties or the inability to provide a solvent surety should not act as a barrier to their release - In cases where a foreign national cannot meet surety requirements due to financial constraints, they may be released on a personal bond and subsequently housed in a detention center to ensure they do not leave the country - Supreme Court explicitly grounded its reasoning in the constitutional mandate of Article 21 of the Constitution of India, emphasizing its universal application to any person within the territory of India, regardless of nationality. [Paras 4-13]**

[Arising out of impugned final judgment and order dated 15-09-2025 in BA No. 899/2025 passed by the High Court of Delhi at New Delhi]

*For Petitioner(s): Mr.Rajkumar Bhaskar Thakre, ASG, Mr. Gurmeet Singh Makker, AOR*

**ORDER**

1. Our order dated 11.2.2026 reads thus: -

*“1. This petition is at the instance of the Customs through Air Customs Officers, IGI, Airport, New Delhi, being dissatisfied with the order passed by the High Court of Delhi dated 15.9.2025 in Bail Application No. 899 of 2025, by which the bail application preferred by the respondent herein original accused came to be allowed.*

2. *It appears that the respondent has been put to*

*trial in connection with proceedings arising out of FILE/C No.VIII(AP)(10)P&I/3415-C/ARRIVAL/2022 dated 14.10.2022 for the offence punishable under Sections 8,21,23 and 28 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, “the NDPS Act”) respectively, registered with the Customs Police, Delhi.*

3. *The respondent is a 32 years old lady accused. She is a Ugandan national. She was arrested in connection with the offence, enumerated above. She prayed for bail, which ultimately came to be granted. The Customs is here with the present petition before us seeking cancellation of bail.*

4. *We heard Mr. Rajkumar Bhaskar Thakre, the learned ASG appearing for the petitioner-department.*

5. *We take notice of the fact that the trial is in progress. As informed 18 witnesses have been examined so far. The prosecution proposes to examine in all 39 witnesses.*

6. *The respondent is appearing before the Trial Court on all the dates of hearing.*

7. *Delay condoned.*

8. *Issue notice, returnable on 18.03.2026.*

9. *Dasti service, in addition, is permitted.”*

2. Today, when the matter was taken up for further hearing Mr.Rajkumar Bhaskar Thakre, the learned ASG appearing for the Department brought to our notice that although the respondent was ordered to be released on bail by the High Court way back on 15.09.2025, yet she still continues to remain in jail as she has not been able to furnish the solvent surety as directed by the High Court. We are aware of the fact that the lady accused is a Ugandan National. Even if she would have been released on bail on furnishing solvent surety as ordered probably, she might have been confined at the detention centre meant for foreign nationals.

3. It is for this reason that, today, also no one has appeared on behalf of the respondent-accused.

4. This is an issue which requires consideration. At times, an accused may not be in a position to furnish bail and solvent surety of the like amount due to his/her financial constraints etc. Here is a case of a lady accused who is a foreign national. However, the fact remains that Article 21 of the Constitution would apply even to a foreign national sought to be prosecuted as an accused in this country. Once an accused has been able to make out a case for bail, then factors like financial difficulties etc. should not come in the way of an accused in getting himself or herself released on bail.

5. We are of the view that the respondent-accused should be asked to furnish a personal bond of an amount of Rs.25,000/- (Rs.Twenty five thousand only). On furnishing a personal bond of Rs.25,000/-, the Jail Authorities shall release her from the Tihar Jail.

6. The passport of the respondent accused is already with the Trial Court. Once the respondent accused is released from Tihar Jail, she shall be taken to the detention centre and be kept over there. The Department should also take up the issue with the immigration authorities to ensure that she does not leave the country.

7. The Delhi State Legal Services Authority (for short, "the DSLSA") shall see to it that the respondent-accused on furnishing a personal bond of Rs.25,000/-(Rs.Twenty Five thousand only), is released at the earliest from Tihar Jail and she shall be settled at one of the detention centres in Delhi.

8. We take notice of the fact that the initial order of the High Court releasing the respondent on bail was subject to terms and conditions that the Trial Court may deem fit to impose.

9. The Trial Court imposed certain bail conditions, including one surety of Rs.1,00,000/-(Rs.One lakh only); later this amount came to be reduced by the Trial Court to Rs.50,000/-(Rs.Fifty thousand only), thereafter to Rs.30,000/- (Rs.Thirty thousand only) and in the last to Rs.25,000/- (Rs.Twenty Five thousand only) but the respondent-accused has not been able to furnish one solvent surety even of Rs.25,000/-. Thus, in the peculiar facts and circumstances of this case, we have passed this order that the respondent-accused shall be asked to furnish a personal bond of Rs.25,000/- and upon furnishing of such bail bond, she be released from Tihar Jail and thereafter taken to the detention centre.

10. One copy of this order shall be forwarded at the earliest to the DSLSA along with the one set of the entire paper book.

11. We are of the opinion that it is too late in the day for us to now look into the legality and validity of the impugned order passed by the High Court releasing the respondent on bail. Almost 22 witnesses have been examined so far. Till the conclusion of the trial, the respondent shall be kept at the detention centre.

12. We also take notice of the observations made by the High Court in Paragraph 7 of its impugned order. Paragraph 7 reads thus:-

*“7. Prima facie PW-4's testimony is contradictory to the prosecution's case. The applicant has already spent over three years in custody. Applicant, a lady, has no criminal record, and also alleges racial discrimination, which, cannot be ruled out.*

13. It is needless to clarify that the guilt or the innocence of the accused shall be determined strictly on the basis of the evidence that may come on record.

14. The Trial Court shall proceed with the trial without being influenced in any manner by the observations made in Paragraph 7 referred to above.

15. With the aforesaid, this petition stands disposed of.

16. Pending application(s), if any, stand disposed of.

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