



\$~118

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

CNR No. DLHC010085882026

+ **BAIL APPLN. 936/2026**

NASEEB SINGH

.....Petitioner

Through: Mr. Aditya Aggarwal and Mr. Naveen
Panwar, Advocates.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Tarang Srivastav, APP.
SI Amrendra, ANTF, Crime Branch.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **13.10.2026**

1. The Applicant seeks regular bail under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023, in FIR No. 08/2025, registered at Police Station Crime Branch for offences under Sections 20, 25 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ["NDPS Act"]. This is his second bail application before this Court. His earlier application was dismissed on 10th October, 2025. Thereafter, his subsequent bail application was dismissed by the Special Judge (NDPS) *vide* order dated 17th February, 2026.

2. The prosecution alleges that on 8th January, 2025, acting upon secret information concerning the transportation of *charas* to Delhi, a police team trailed an Ertiga car bearing registration No. HP 01 SA 0307. The occupants, identified as the Applicant and co-accused Sanjeev, were followed to Maharaja Hotel, Timarpur, where they were apprehended in Room No. 107.



A search of a bag allegedly carried by the Applicant led to the recovery of 1.428 kilograms of *charas*. The prosecution further alleges that the Applicant had arranged with Sanjeev to transport the contraband to Delhi for a consideration of INR 30,000/-, of which INR 9,000/- was paid in advance. The investigation also led to the arrest of another accused, Inder Singh, from whom a separate recovery of *charas* is alleged. The chargesheet has since been filed and charges have been framed.

3. The Applicant's first application for regular bail was dismissed by the Trial Court on 22nd April, 2025. His subsequent application before this Court, BAIL APPLN. 3880/2025, was also dismissed on 10th October, 2025, having regard to the material on record and the rigours of Section 37 of the NDPS Act. The Applicant thereafter preferred a fresh application before the Trial Court, raising additional grounds concerning the sampling procedure, custody of the seized substance and communication of the grounds of arrest. The said application was dismissed on 17th February, 2026, leading to the present proceedings.

4. Mr. Aditya Aggarwal, counsel for the Applicant, submits that the present application raises grounds which were not considered when bail was earlier declined by this Court. He questions the manner in which the seized contraband was handled. Although samples were drawn before the Magistrate on 16th January, 2025, they were received by the FSL only on 22nd January, 2025. The *malkhana* register, it is pointed out, contains no corresponding entries recording the removal of the case property for sampling or its subsequent deposit. Further, although the prosecution claims to have videographed the recovery through the e-Sakshya application, the recording has not been furnished to the defence despite a request for its



production. Mr. Aggarwal also relies on the Applicant's continued incarceration since 9th January, 2025, his absence of criminal antecedents and the fact that the prosecution has cited 25 witnesses.

5. Opposing the application, Mr. Tarang Srivastav, APP for the State submits that 1.428 kilograms of charas was recovered from the Applicant's bag, bringing the case squarely within the restrictions imposed by Section 37 of the NDPS Act. The prosecution relies on the seizure and forensic evidence, as well as the alleged financial transactions and communications between the Applicant and the co-accused, which, establish his involvement in transporting the contraband for sale in Delhi. It is further submitted that the grounds of arrest were duly supplied and the prescribed procedures for search and seizure were followed. The delay in forwarding the samples to the FSL is attributed to difficulties in generating the requisite barcode, while the recording of the recovery is stated to have been uploaded on the e-Sakshya portal. The State maintains that there has been no material change in circumstances since the earlier rejection of bail by this Court. It also expresses apprehension that the Applicant, who has no permanent residence in Delhi, may evade trial or engage in similar activities if released.

6. Heard. The Court is conscious that a successive bail application cannot be used to secure reconsideration of grounds already examined and rejected. As explained in *Kalyan Chandra Sarkar v. Rajesh Ranjan*,¹ a subsequent application requires a material change in circumstances, whether factual or legal. The findings in the earlier order must receive due weight.

7. In the earlier order, this Court had considered the alleged recovery of 1.428 kilograms of *charas*, the FSL report and the material indicating the



Applicant's involvement in transporting the contraband to Delhi. On that basis, the Court found that the conditions prescribed under Section 37 of the NDPS Act were not satisfied. The present application, however, raises specific concerns regarding the sampling of the contraband and its subsequent custody, which were not separately adjudicated in the earlier order. These contentions require consideration in light of the subsequent decisions concerning compliance with Section 52A of the NDPS Act and the rules governing sampling.

8. The consideration of these additional grounds must nevertheless be undertaken within the framework of Section 37 of the NDPS Act, since the alleged recovery of 1.428 kilograms of charas constitutes commercial quantity. As reiterated by the Supreme Court in *State of Punjab v. Sukhwinder Singh @ Gora*,² the Court must be satisfied that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and is unlikely to commit any offence while on bail. Prolonged incarceration or delay in trial cannot, by itself, dispense with these requirements.

9. The principal concern arises from the sampling proceedings themselves. According to the seizure memo, the substance recovered from the Applicant consisted of 144 spherical pieces, having a total net weight of 1.428 kilograms. On 16th January, 2025, the seized material was produced before the Magistrate for proceedings under Section 52A of the NDPS Act. The Magistrate's order records that two samples of 10 grams each were drawn and placed in containers marked C1 and C2. One was to be sent to the

¹ (2005) 2 SCC 42.

² 2026 INSC 411.



FSL, while the other was to be retained in the *malkhana*.

10. Rule 11(1) of the NDPS (Seizure, Storage, Sampling and Disposal) Rules, 2022 expressly requires that, in the case of *charas*, not less than 24 grams be drawn for each sample. Rule 11(2) further requires the seized substance to be properly mixed so that the sample is homogeneous and representative. The samples drawn in the present case were thus considerably below the prescribed quantity. Further, although the seizure memo describes 144 separate spherical pieces, the Magistrate's proceedings do not record how these were mixed or how the samples were made representative of the entire recovered substance. The departure from the prescribed procedure assumes significance as it raises a question whether the samples drawn were truly representative of the entire seized quantity, and consequently, whether the FSL findings in respect of those samples can be reliably extended to the whole of the alleged recovery.

11. There is a further issue concerning the custody and movement of the seized material. The sampling was completed on 16th January, 2025, whereas the sample reached the FSL on 22nd January, 2025. Rule 13(1) requires the samples certified by the Magistrate to be forwarded directly to the laboratory without delay. The Applicant has also pointed out that the copy of the *malkhana* register does not disclose corresponding entries showing the removal of the seized property for sampling on 16th January, 2025, or its return after the proceedings. The prosecution attributed the interval in forwarding the sample to difficulties in generating the requisite barcode. That explanation was offered before the Trial Court, but no contemporaneous record supporting it has been identified. These aspects assume importance because the prosecution must establish the identity and



safe custody of the material from which the sample tested by the FSL was drawn.

12. The Court does not overlook the circumstances supporting the prosecution. The seized material was produced before a Magistrate, who recorded that the seals were intact, supervised the drawing of samples and certified the proceedings. The FSL subsequently received a sealed parcel. These are material safeguards, and the six-day interval in forwarding the sample cannot, without more, be treated as proof of tampering. Nevertheless, the integrity of the seals and the representativeness of the sample are distinct considerations. One does not necessarily answer the other.

13. The legal position in this regard requires some care. In *Narcotics Control Bureau v. Kashif*,³ the Supreme Court held that delayed or defective compliance with Section 52A does not automatically entitle an accused to bail. In *Bharat Aambale v. State of Chhattisgarh*,⁴ the Court explained that substantial compliance is sufficient, but a departure affecting the reliability of the recovery or the integrity of the samples may warrant an adverse inference, depending on the circumstances. More recently, in *Abdul Rajik v. State of Madhya Pradesh*,⁵ the Supreme Court emphasised that the prosecution must establish, through reliable oral and documentary evidence, the complete chain of custody of the seized samples, from their seizure until their receipt at the FSL, so as to demonstrate that their integrity was maintained throughout. Although that decision arose from an appeal against conviction and involved more serious deficiencies in the evidence, it

³ 2024 INSC 1045.

⁴ 2025 INSC 78.



reinforces the importance of an established chain of custody.

14. This Court has also examined comparable issues in *Manjay Kumar v. State (NCT of Delhi)*,⁶ and *Prahlad Kumar v. State (NCT of Delhi)*.⁷ Both decisions considered the principles laid down by the Supreme Court in *Bharat Aambale*, which clarifies that while substantial compliance with Section 52A of the NDPS Act is sufficient, once the accused establishes foundational facts indicating non-compliance, the onus shifts to the prosecution to establish substantial compliance or demonstrate that such non-compliance does not affect its case. In such circumstances, the statutory presumption under Section 54 cannot be invoked unless the recovery is otherwise satisfactorily established. Further, in *Manjay Kumar*, this Court, while considering decisions of the Supreme Court subsequent to *Narcotics Control Bureau v. Kashif*, including *Wajid Ali @ Tinku v. State of Rajasthan*,⁸ observed that non-compliance with Section 52A may constitute a significant ground for grant of bail. Thus, procedural deficiencies which materially affect the reliability of the recovery or sampling process must be assessed in conjunction with the other circumstances of the case, even at the stage of bail.

15. Applying these principles, the Court finds that the present objections cannot be treated simply as technical irregularities. The drawing of samples considerably below the prescribed quantity, the absence of a recorded account of how the separate pieces were made homogeneous, and the questions concerning the movement and custody of the samples require an

⁵ 2026 INSC 1001.

⁶ 2026:DHC:2295.

⁷ 2026:DHC:4225.

⁸ In SLP (CRL.) 7049/2025, decided on 9th February, 2026.



explanation. The prosecution may ultimately establish through the evidence of the seizing officer, the *malkhana* officials and the forensic witnesses that the samples were representative and remained secure throughout. That is a matter for trial. At this stage, however, the material leaves a substantial question concerning the extent to which the FSL result can be relied upon to establish the entire alleged recovery as *charas*.

16. This question assumes particular significance because the alleged recovery is 428 grams above the commercial threshold. The quantity cannot be treated as intermediate merely because it is not substantially in excess of that threshold. Equally, where compliance with the prescribed sampling requirements is seriously questioned, the Court must consider whether the prosecution has sufficiently established, even *prima facie*, that the entire quantity attributed to the accused is the prohibited substance. The field test conducted at the spot and the subsequent FSL result are relevant evidence, but their evidentiary value must be considered alongside the manner in which the sample was drawn and preserved. The Court is not recording a finding that the recovery was fabricated or that the samples were tampered with. The concerns identified above are nevertheless material to the statutory enquiry under Section 37.

17. There are other circumstances relevant to the present assessment. The Applicant has remained in custody since 9th January, 2025, a period of approximately one year and nine months. Charges were framed on 24th November, 2025, and the prosecution has cited 25 witnesses. The investigation is complete and the material relied upon by the prosecution has been secured. These circumstances, though insufficient by themselves to overcome the rigours of Section 37, assume relevance when considered



alongside the concerns arising from the sampling and custody records.

18. On a cumulative consideration, the Court is of the *prima facie* view that the departures from the prescribed sampling procedure, coupled with the questions regarding the custody and movement of the samples, provide reasonable grounds for believing that the Applicant may not be guilty of the offence involving commercial quantity as alleged. This assessment is confined to the present bail proceedings and does not amount to a determination of the evidentiary objections, which remain open for trial. As regards the second requirement under Section 37, the Applicant has no reported criminal antecedents, and his conduct in custody has been satisfactory. The apprehensions expressed by the State concerning his availability for trial and possible reoffending can, in the circumstances, be addressed through appropriate conditions. The Court is accordingly satisfied, for the limited purpose of the present application, that the requirements of Section 37 stand met.

19. Accordingly, the application is allowed. The Applicant shall be released on regular bail in FIR No. 08/2025, Police Station Crime Branch, upon furnishing a personal bond of INR 50,000/- with one surety in the like amount, to the satisfaction of the Trial Court, subject to the following conditions:

- (i) The Applicant shall appear before the Trial Court on every date of hearing, unless exempted.
- (ii) He shall furnish his permanent residential address and contact details to the Trial Court and the Investigating Officer and shall intimate any change in advance.
- (iii) He shall not leave India without prior permission of the Trial Court.



(iv) He shall not directly or indirectly contact, threaten, induce or influence any prosecution witness, or interfere with the evidence.

(v) He shall report to the police station having jurisdiction over his place of residence on the first Monday of every month and furnish proof of such attendance to the Investigating Officer.

(vi) He shall not involve himself in any criminal activity during the pendency of the trial.

20. The Trial Court shall also ensure that the Applicant is afforded access, in accordance with law, to the electronic recording of the search and seizure proceedings upon which the prosecution proposes to rely.

21. The observations made in this order are confined to the consideration of bail and shall not influence the Trial Court in its independent assessment of the evidence. It is clarified that the Applicant's release shall not prevent the State from seeking cancellation of bail in the event of any violation of the conditions imposed.

22. The application is disposed of in the above terms.

SANJEEV NARULA, J

OCTOBER 13, 2026/as