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

# **CNR No. DLHC010311662026**

+ **BAIL APPLN. 2770/2026**

**ROHIT KUMAR SHARMA**

.....Petitioner

Through: Mr. Madhav Khurana Sr. Adv. with  
Ms. Aarushi Singh, Mr. Aditya  
Vaibhav Singh, Mr. Chirag Sahni,  
Ms. Riya Parihar, Mr. Lakshay  
Sahrawat, Ms. Shaurya Singh, Mr.  
Prabhat Vohra and Mr. Govind  
Vohra, Advs.

versus

**THE STATE NCT OF DELHI**

.....Respondent

Through: Mr. Naresh Kumar Chahar, APP for  
the State.

**CORAM:**

**HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV**

**ORDER**

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**17.08.2026**

1. By way of this application, the applicant seeks regular bail in connection with FIR No.306/2025 for the offences punishable under Sections 20/25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 [**NDPS Act**] registered at Crime Branch, Delhi.
2. Learned counsel appearing for the applicant submits that the applicant is innocent and has been falsely implicated. There is no criminal antecedents against the applicant, and is in jail since 14.10.2025. While placing reliance



on the decision in the case of ***Manjay Kumar v. State NCT of Delhi***,<sup>1</sup> that the FSL report has analyzed each of the aspects and described as “*Dried greenish-brown coloured flowering and fruiting vegetative material*”.

3. It is contended that the weight of the alleged contraband material, including flowering and fruiting tops. The same should have been undertaken while excluding the non-significant material to the contraband article. Even otherwise, it is contended that there is no evidence against the applicant to implicate or to establish his complicity.

4. It is argued that the recovery is in violation of the provisions of the NDPS Act and the CDR itself would not be the reason to establish his complicity. It is contended that there are five accused persons. Two of them have already been enlarged on regular bail.

5. The submissions are opposed by Mr. Naresh Kumar Chahar, learned APP for the State. He submits that there is recovery of Rs.44,42,000/- from the applicant. The CDR clearly establishes his complicity. The role of the accused that have been enlarged on bail is lesser than the present applicant. The present applicant is a dismissed employee of the Customs Department. The applicant thus has been found involved in the Commission of the alleged offence.

6. Mr. Chahar has also indicated the following aspects to implicate the applicant:

*“a. The petitioner Rohit Kumar Sharma is king pin of well-organized Drug Syndicate active in Delhi-NCR region & country.*

*b. The co-accused persons i.e., Sukhmanpreet and Mohit Kumar in the case are absconding.*

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<sup>1</sup> 2026:DHC:2295



*c. The recovered Ganja in this case from the accused/petitioner Rohit Kumar Sharma is of commercial quantity. Hence the bar u/s 37 NDPS*

*Act is applicable. Besides this huge amount of cash i.e Rs 44.42 Lakhs was also recovered from the house of the accused/petitioner.*

*d. Co-accused Mohit Kumar went to Guwahati and received drugs consignment from the accused/petitioner Rohit Kumar Sharma and brought the drug consignment to Delhi, which is reflected in his CDR which is also corroborated by Disclosure Statement of accused/petitioner Rohit Kumar Sharma. The anticipatory bail of co-accused Mohit Kumar was dismissed by Hon'ble Court vide order dated 03/08/2026.*

*e. Accused/petitioner Rohit Kumar Sharma is a desperate criminal and if he be released on bail, he may commit the same offence again and also temper with the evidences of the case and may also facilitate the absconding accused persons.”*

7. I have considered the submission made by learned counsel appearing for the parties and have perused the record.

8. According to the prosecution, acting upon prior information, a raid was conducted on the intervening night of 13<sup>th</sup> and 14<sup>th</sup> of October 2025, during which the applicant was found in possession of 1.003 kg of *Ganja* and cash amounting Rs. 1,99,500. On the basis of disclosure statement made by the applicant in interrogation, a further recovery of 20.509 kg of *Ganja* was effected from a car registered in the name of applicant's wife, which was parked in front of applicant's house. A further amount of Rs. 42,42,500 was recovered from the applicant's house. The investigation was thereafter completed and the chargesheet was filed.

9. The recovery involved in the present case is 21.512 kg of *Ganja*. Though *prima facie* the recovered quantity falls within the category of commercial quantity, it is only marginally above the prescribed commercial quantity of 20 kg. At this stage, it would be apposite to refer to the definition



of "*Ganja*" as provided under Section 2(iii)(b) of the NDPS Act:-

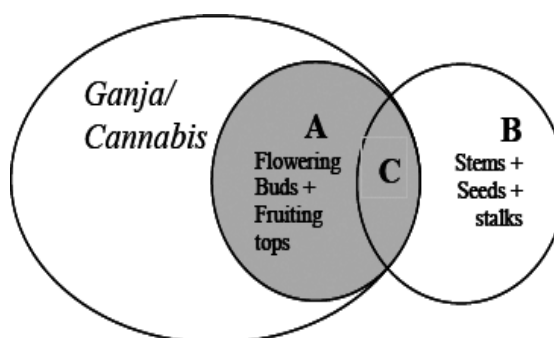
*“(b) Ganja, that is, the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever name they may be known or designated;”*

10. A plain reading of the aforesaid provision makes it evident that the expression "*Ganja*" is confined to the flowering or fruiting tops of the cannabis plant. The seeds and leaves, when not accompanied by such flowering or fruiting tops, stand specifically excluded from the statutory definition of *Ganja*. Therefore, only such parts of the cannabis plant as fall within the ambit of Section 2(iii)(b) of the NDPS Act can be taken into consideration while determining the quantity of contraband recovered.

11. The aforesaid position has been reiterated by this Court in ***Ravina Kumari v. The State (NCT of Delhi)***,<sup>2</sup> wherein this Court, by way of a Venn diagram, explained the legislative intent underlying the definition of *Ganja* as contained in the NDPS Act and clarified the scope and ambit of the statutory definition. The relevant paragraphs are extracted hereinbelow:-

*“17. From the definition, it is evident that flowering buds and fruiting tops of the cannabis plant would be covered under section 2 (iii)(b) but merely leaves/seeds and stalks would not form a part of the definition of “Ganja” unless accompanied by the flowering and fruiting tops.*

*18. This can be represented accurately by the below Venn diagram:*



<sup>2</sup> 2024 SCC OnLine Del 6748



19. Thus, the intention of the Legislature appears to be clear that in case of Ganja, if it is merely **Category A** i.e. a homogenous mixture of flowering buds and fruiting tops, then the same would fall within the meaning of “Cannabis”, however, if it is merely **Category B** i.e. a homogenous mixture of seeds/leaves/stalks without the fruiting tops and buds, then the same would not attract the provisions of the NDPS Act.

20. Though the position with respect to homogenous mixtures i.e. **Category A & B** is clear, there is often a conundrum surrounding the quantification of **Category C**, i.e. the overlap between Category A and Category B constituting the heterogenous mixtures which include both the flowering tops and fruiting buds, along with the stems/leaves and seed.

21. From the framework of the entire NDPS Act and a reading of S. 2 (iii)(b), it emerges that if the material seized is a heterogenous mixture/Category C, constituting of Category A mixed with Category B, the placebo material such as stalks/leaves/stems (Category B) would not constitute an actual part of the drug and only the actual content and weight of the narcotic drug (Category A) would be relevant for determining whether it would constitute small quantity or commercial quantity.

22. Similar observations have been made in the cases of Kunal Dattu Kadu (Supra) and Shri Sandip Ashok Raut (Supra) and it was held that to ascertain whether the material seized was Ganja, it will have to be ultimately ascertained whether the flowering and fruiting are accompanied by the seeds and leaves as the weight of these seeds/leaves/stems, has to be excluded.

23. Axiomatically, the weight of seeds/stalks and stems (**Category B**) should be excluded while calculating the actual quantity (**Only Category A**) recovered.”

12. A similar view has consistently been taken by this Court in several of its decisions, including **Ashok Kumar v. State (Govt. of NCT of Delhi)**,<sup>3</sup> **Manjay Kumar v. State (NCT of Delhi)** (supra), **Mujabil v. GNCT of Delhi**,<sup>4</sup> and **Pawan Yadav v. State (NCT of Delhi)**,<sup>5</sup> amongst others.

13. Applying the aforesaid principles to the facts of the present case, it is evident that the alleged recovery is of 21.512 kg of material stated to be Ganja. The contraband substance was thereafter sent to the FSL for examination vide Examination Report No. 42645 dated 29.01.2026. Upon examination of the contraband substance, the FSL report notes as follows:

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<sup>3</sup> BAIL APPLN. 2962/2025; Dated 21.11.2025

<sup>4</sup> 2026 SCC OnLine Del 1551

<sup>5</sup> BAIL APPLN. 1097/2026; Dated 21.07.2026



*“Dried greenish-brown coloured flowering and fruiting vegetative material”*

14. If the test laid down by this Court in **Ravina Kumari** (supra) is applied to the facts of the present case, it would be difficult, at this stage, to conclude that the entire recovered substance was accompanied by the flowering or fruiting tops of the cannabis plant so as to qualify as Ganja within the meaning of Section 2(iii)(b) of the NDPS Act. Significantly, 23 packets of the recovered contraband, each containing approximately 10 grams of the substance, were sent to the FSL for examination. Although the FSL report describes the samples as *“dried greenish-brown coloured flowering and fruiting vegetative material”*, such examination was confined to the samples so forwarded and, by itself, would not establish that the entire recovered contraband comprised flowering or fruiting tops.

15. More importantly, neither the FIR nor the seizure memo specifically records that the entire contraband comprised flowering or fruiting tops. Rather, the description of the recovered material as *“dried greenish-brown coloured flowering and fruiting vegetative material”* may encompass leaves and other parts of the cannabis plant not accompanied by flowering or fruiting tops. Such parts are expressly excluded from the statutory definition of Ganja under the Act. Consequently, at this stage, it cannot be conclusively held that the entire recovered material would qualify as Ganja for the purpose of determining the quantity of contraband under the NDPS Act.

16. In view of the aforesaid discussion, it *prima facie* appears that the weight of the contraband, as statutorily defined under Section 2(iii)(b) of the NDPS Act, may be less than the prescribed commercial quantity of 20 kg. In



such circumstances, a substantial doubt arises, at this stage, regarding the applicability of the rigours of Section 37 of the NDPS Act. Consequently, whether the embargo contained under Section 37 of the Act would be attracted is a matter requiring consideration during trial upon appreciation of the evidence led by the parties.

17. In **Ravina Kumari** (supra), **Mujabil** (supra) and **Pawan Yadav** (supra), where the alleged recoveries were 23.465 kg, 21.950 kg, and 21.020 kg respectively, this Court adopted a similar approach. It was observed that where a *prima facie* discrepancy exists with regard to whether the entire recovered substance answers the statutory definition of *Ganja*, and consequently the actual weight of the contraband, the benefit of such uncertainty would enure to the accused at the stage of consideration of bail. In such circumstances, the rigours of Section 37 of the NDPS Act were held not to be attracted for the purpose of deciding the application for regular bail, leaving the issue to be conclusively determined during trial upon appreciation of the evidence

18. Reference may be made to paragraphs 5, 24 and 26 to 30 of the judgment in **Ravina Kumari** (supra). The relevant extracts are reproduced hereinbelow:

*“5. It is pleaded that there is alleged recovery of 23.456 kg Ganja from her carry bag, included the leaves and stalks/ stems which does not fall in the definition of contraband material. Thus, without the stems, the actual quantity of Ganja would only be mere 3.465 Kg., i.e. much lesser than the commercial quantity of 20 kgs.*

*24. Evidently, the present case is of a recovery falling within Category C. The Chargesheet records that when the Petitioner/Ravina was apprehended, blue coloured plastic polythene bag was recovered from her which contained grass-like flowery-leafy material along with its stems, which appeared to be “Ganja” and was seized vide the seizure memo. On weighing, the recovered Ganja on the electronic weighing machine, the total weight of the quantity recovered, was about 24.145 Kg.*



26. Pertinently, the recovered quantity of about 24.145 Kg was just 4.145 kgs more than the commercial quantity. Since, the entire substance including stems/stalks and dried leaves were weighed together without quantifying the weight of the flowering or fruiting tops, the quantity of 'Ganja' seized from the Applicant may be less than commercial quantity so as to attract Section 20 of the NDPS Act. The weight of actual Ganja recovered is a matter of trial.

27. It has been consistently held that if there is a *prima facie* discrepancy in what was seized and what was analysed and weighed and there are reasonable grounds to believe that the petitioner is not guilty of offences dealing in commercial quantity. Consequently, the rigors of Section 37 of the NDPS Act, 1985 for grant of regular bail, would not become applicable as has been held in the case of Ibrahim Khwaja Miya Sayyed (Supra).

28. In the case of Suresh Kumar (Supra), the Coordinate Bench of this Court gave benefit to the accused under Section 20(b)(C) to 20 (b) (ii)(B) by observing that the weight of the contraband was not precise and the actual quantity of Ganja seized could not be determined because the FSL reflected that seeds, which do not come within the definition of Ganja, were weighed along with the flowering and fruiting tops. Thus, when there is a doubt on the actual amount of recovery of contraband, then this unexplained discrepancy would result in a benefit accruing in favour of the bail applicant.

29. Similar observations have been made in the case of Rajesh Sharma (Supra), Bettanayaka (Supra), Ratanlal (Supra) and Ratnesh (Supra).

30. ***In light of the above discussion, it is settled that if there is the discrepancy in weight, as in the present case, the same would be a matter of trial.***

19. Bearing in mind the overall facts and circumstances of the case, particularly the applicant's incarceration for more than 10 months, the *prima facie* doubt regarding the applicability of Section 37 of the NDPS Act, the fact that the chargesheet has already been filed, the applicant is not stated to be involved in any other case of a similar nature, the charges are yet to be framed, the trial is likely to take considerable time to conclude, and two other co-accused have already been enlarged on bail, this Court is of the opinion that the applicant has made out a case for grant of regular bail.

20. Needless to observe, the observations made herein are only for the



purpose of deciding the present bail application and shall not be construed as an expression on the merits of the case, which shall be adjudicated during the course of trial

21. Accordingly, the application be released on regular bail subject to such conditions as may be imposed by the concerned trial Court.

22. Application stands disposed of.

**PURUSHAINDR KUMAR KAURAV, J**

**AUGUST 17, 2026/p**