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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
CNR No. DLHC010404122026
+ **CRL.M.C. 6356/2026 & CRL.M.A. 26539/2026, CRL.M.A. 26540/2026**
RAHIL Petitioner

Through: Mr. Hasim Alam, Ms. Khushi A. Ayubi, Mohd. Haider Ayyoob and Mr. Salahuddin Ayubi, Advs.

versus

STATE NCT OF DELHI Respondent
Through: Mr. Manoj Pant, APP.

CORAM:
HON'BLE MS. JUSTICE MADHU JAIN

ORDER

% **31.08.2026**

1. This hearing has been conducted through hybrid mode.
2. The present petition has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter, referred to as 'BNSS') seeking setting aside of the order dated 21.08.2026 passed by the learned Special Judge (NDPS), Shahdara District, Karkardooma Courts, Delhi in FIR No. 26/2026, registered at Police Station Crime Branch for offences punishable under Sections 21, 25 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act'), whereby process under Section 84 of BNSS, corresponding to Section 82 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C'), was issued against the petitioner. The petitioner also seeks protection from coercive action arising out of the said proceedings.



FACTUAL BACKGROUND

3. Brief facts relevant for the disposal of the present petition are that, pursuant to secret information stated to have been received on 09.02.2026, Arif and Shikha Ali were apprehended in the early hours of 10.02.2026. The prosecution alleges that 303 grams of heroin was recovered from a bag carried by Arif and a further 1007 grams of suspected heroin was recovered from the vehicle in which they were travelling. **FIR No. 26/2026** was consequently registered at Police Station Crime Branch under Sections 21, 25 and 29 of the NDPS Act.

4. During investigation, Jumman and Sangeeta were also arrested and recoveries of 194 grams and 105 grams of heroin, respectively, are alleged to have been effected. According to the prosecution, the disclosure statements of the arrested accused Arif and Shikha Ali named the petitioner as the source of the concerned contraband and the call-detail and internet-protocol detail records disclosed connectivity between the petitioner and the other accused. No recovery is alleged to have been effected from the petitioner.

5. The record states that raids were conducted at the petitioner's residential premises on 12.02.2026, 05.05.2026 and 14.05.2026. The petitioner disputes that any notice under Section 67 of the NDPS Act was served upon him or affixed at the premises on those occasions.

6. On 31.07.2026, the learned Trial Court issued NBW against the petitioner and the co-accused, Mannan @ Rahil, returnable on 21.08.2026. The charge-sheet was thereafter filed on 07.08.2026 and cognizance was taken on 10.08.2026. The petitioner states that his counsel inspected the judicial record on 11.08.2026 and then learnt of the NBW. Thereafter, an application seeking anticipatory bail was filed on 13.08.2026 and was taken



up on 14.08.2026 and 19.08.2026.

7. *Vide* order dated 20.08.2026, the learned Trial Court recorded that, although the learned counsel had admitted the petitioner's involvement in other cases under the NDPS Act in Delhi and Uttar Pradesh, the same had not been disclosed in the affidavit filed with the anticipatory-bail application. Therefore, on the request of the learned counsel, the said application was dismissed as withdrawn.

8. On 21.08.2026, learned counsel for the petitioner sought an urgent listing of a fresh anticipatory-bail application and also moved an application before the learned Trial Court seeking stay of the NBW and further proceedings arising therefrom. A request was also made to permit the petitioner to appear through video conferencing (VC). *Vide* the impugned order, the learned Trial Court dismissed the stay application, inter alia, on the grounds that it was not signed by the petitioner, that it was not supported by a vakalatnama, that no anticipatory-bail application was then pending on the record of that Court and that the petitioner was not present.

9. The impugned order further records that the NBW issued against the petitioner had been returned unexecuted with the report “*premises locked*” and that a copy had been affixed at the main gate of the address. On that basis, the learned Trial Court held that the petitioner and the co-accused had absconded and were concealing themselves to evade the process of law. The application moved by the Investigating Officer (IO) was allowed and process under Section 84 of BNSS was directed to be issued, with publication in two national newspapers. The matter was listed for the report on the process on 05.10.2026. Aggrieved by the aforesaid, the petitioner has filed the present petition.



SUBMISSIONS ON BEHALF OF THE PETITIONER

10. Learned counsel for the petitioner submits that the jurisdictional condition for issuance of a proclamation under Section 84 of BNSS was not satisfied. That the provision requires the Court to have reason to believe that a person against whom a warrant has been issued has absconded or is concealing himself so that the warrant cannot be executed. He submits that the mere return of a warrant as unexecuted does not, by itself, establish the deliberate evasion contemplated by the provision.

11. It is further submitted, that insofar as the petitioner is concerned, the only execution report noticed in the impugned order was “*premises locked*”. That there was no material showing that the petitioner had knowledge of the warrant before 11.08.2026 and that he thereafter concealed himself to prevent its execution. He further submits that the impugned order treated the distinct reports against the petitioner and the co-accused alike and recorded a common conclusion of abscondence, without an individual assessment of the material relating to the petitioner.

12. The learned counsel further relied upon the petitioner's conduct immediately after the asserted date of knowledge. That the anticipatory-bail application was filed on 13.08.2026, that it was pursued on 14.08.2026 and 19.08.2026, that after its withdrawal on 20.08.2026, an urgent listing of a fresh application was sought on 21.08.2026 and that an application for stay of the warrant was moved on the same day together with a request for appearance through VC. These steps were relied upon, not as a substitute for personal appearance or as an absolute bar to proceedings under Section 84 of BNSS merely because pre-arrest bail had been sought, but as contemporaneous conduct inconsistent with an inference of deliberate concealment.



13. It is also submitted that the defects noticed in the application seeking stay of the NBW, and the fact that no anticipatory-bail application was pending before the learned Trial Court at that precise time, could justify disposal of that application but could not dispense with the separate statutory satisfaction required under Section 84 of BNSS. It is contended that the failure of the stay application did not ipso facto establish that the petitioner had absconded or concealed himself.

14. Learned counsel lastly refers to the absence of any recovery from the petitioner, the petitioner's case that no notice under Section 67 of the NDPS Act was ever served or affixed during the alleged raids, and the absence of any reference to his alleged role in the earlier status report filed in the bail proceedings of co-accused Sangeeta. It is urged that these circumstances, coupled with the petitioner's undertaking to appear and cooperate with the investigation and the learned Trial Court, warrants setting aside of the impugned order, at least insofar as it concerns the petitioner, subject to such conditions and time-bound appearance as this Court may deem appropriate.

ANALYSIS AND FINDINGS

15. I have considered the submissions advanced on behalf of the petitioner and have perused the material placed on record.

16. The principle issue before the court is neither, whether the petitioner is guilty of the offences alleged in **FIR No. 26/2026**, nor whether he is entitled to anticipatory bail. The issue is whether the order dated 21.08.2026 issuing process under Section 84 of BNSS suffers from any illegality, perversity or non-application of mind warranting interference in exercise of the inherent jurisdiction of this Court.

17. Section 84(1) of BNSS empowers a Court to publish a written



proclamation where it has reason to believe that a person against whom a warrant has been issued has absconded or is concealing himself so that the warrant cannot be executed. The expression 'reason to believe' requires a subjective satisfaction founded on the material before the Court. The provision, however, does not require the Court to conduct a detailed trial or record evidence before initiating the process.

18. In ***Srikant Upadhyay v. State of Bihar, (2024) 12 SCC 382***, the Hon'ble Supreme Court, while examining Section 82 of Cr.P.C., held that the Court must be subjectively satisfied that the person concerned has absconded or concealed himself. It was further held that filing an application for anticipatory bail through an advocate cannot be treated as appearance before the Court and that, in the absence of interim protection, pendency of an anticipatory-bail application does not bar the Trial Court from proceeding with proclamation in accordance with law. The same principles apply to Section 84 of BNSS, which corresponds with Section 82 of Cr.P.C.

19. It is the petitioner's own case that his counsel learnt of the NBW on 11.08.2026. Despite such knowledge, the petitioner did not appear before the learned Trial Court and instead pursued anticipatory bail. The concerned application was dismissed as withdrawn on 20.08.2026 after the learned Trial Court noticed that his involvement in other NDPS cases had not been disclosed in the supporting affidavit. Thus, as on 21.08.2026, the warrant remained unexecuted and the petitioner had not submitted to the jurisdiction of the Court.

20. The impugned order records that the NBW was returned unexecuted with the report "*premises locked*" and that a copy was affixed at the main gate of the address and the petitioner remained absent on 21.08.2026. His



application seeking stay was unsigned and unsupported by a vakalatnama and his learned counsel also could not furnish any reason for staying the proceedings. The report “*premises locked*” was, therefore, not considered in isolation.

21. The steps taken through counsel do not establish the petitioner’s willingness to appear. An accused may pursue the remedies available in law, however, in the absence of interim protection, filing an application neither suspends the warrant nor amounts to personal appearance. No order permitting appearance through VC was passed. The undertaking given before this Court also does not cure the petitioner’s earlier non-appearance despite knowledge of the warrant.

22. The learned Trial Court first dismissed the petitioner’s application seeking stay and thereafter considered the IO’s application under Section 84 of BNSS. The execution reports, affixation of the warrant and continued non-appearance were considered before the requisite satisfaction was recorded. The order, though brief, cannot be characterized as mechanical or unsupported by material.

23. The absence of recovery from the petitioner, the evidentiary value of the disclosure statements, the alleged non-service of notice under Section 67 of the NDPS Act and the absence of any reference to his alleged role in the earlier status report filed in co accused Sangeeta’s bail proceedings concern the merits of the prosecution case. These issues may be raised in appropriate proceedings but do not invalidate the process issued to secure the petitioner’s appearance. No opinion on their merits is called for in the present petition.

24. The inherent jurisdiction under Section 528 BNSS is to be exercised sparingly to prevent abuse of the process of Court or to secure the ends of



justice. In the present case, the material noticed in the impugned order provided a sufficient basis for the learned Trial Court to form the requisite opinion at the stage of issuance of process. No jurisdictional error or perversity has been shown.

25. In view of the foregoing, this Court finds no ground to interfere with the order dated 21.08.2026 insofar as it directs issuance of process under Section 84 of BNSS against the petitioner. The present petition is accordingly dismissed. Pending applications, if any, also stand disposed of.

26. Nothing hereinabove shall be construed as an expression on the merits of the case.

27. A copy of this order be sent to the concerned learned Trial Court for necessary information and compliance.

28. The order be uploaded on the website *forthwith*.

MADHU JAIN, J

AUGUST 31, 2026/PG