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

Reserved on: 31.07.2025

Date of Decision: 14.08.2025

+ **BAIL APPLN. 180/2025**

SHAHIDA

.....Petitioner

Through: Mr. Arvind Vats and
Ms. Yashika, Advs.

versus

THE STATE N.C.T. OF DELHI

.....Respondent

Through: Ms. Meenakshi Dahiya, APP
for State

CORAM:

HON'BLE MR. JUSTICE AJAY DIGPAUL

J U D G M E N T

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1. The present bail application originates from the registration of FIR No. 174/2024, Police Station Narela, under Sections 21/25/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985¹. The FIR was registered on 29.02.2024, upon receipt of specific intelligence received at approximately 12:55 PM by ASI Raj Kumar of the Narcotics Cell, Outer North District, Delhi, regarding the alleged transportation of heroin by two individuals, Amit and Ranjeet, via an e-rickshaw near Satyawadi Raja Harishchandra Hospital, Narela². Acting on this information, a raiding team was constituted, and surveillance was laid at the identified spot.

2. At about 02:35 PM on the same date, a red e-rickshaw bearing registration DL 10ER 4686 was intercepted, carrying the named

¹ Hereinafter "NDPS Act"



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individuals. Upon interception and following procedural formalities, a search was conducted, allegedly leading to the recovery of 300 grams of heroin from the accused. The applicant/petitioner, Shahida, was not present at the scene of the initial apprehension and was not named in the FIR or disclosed in the secret information. The case against her appears to stem from subsequent investigation and purported conspiracy under Sections 21/25/29 of the NDPS Act.

3. The petitioner was arrested and taken into judicial custody on 02.03.2024.

4. Subsequently, the petitioner moved an application under Section 167(2) of the Code of Criminal Procedure, 1973³ on the ground that the alleged recovery of 30 grams of heroin (intermediate quantity) warranted the filing of a chargesheet within 60 days, which had not been complied with. This bail application was dismissed by the learned Trial Court on 20.06.2024.

5. Thereafter, the petitioner preferred a petition before the High Court under Section 167(2) of the CrPC. However, it has been stated by the petitioner that during its pendency, the prosecution had filed the chargesheet. Thus, the petitioner withdrew the said petition with liberty to seek regular bail under Section 439 of the CrPC. Subsequently, she approached the learned Special Judge, NDPS, North District, Rohini Courts, which resulted in the dismissal of her bail application vide order dated 05.12.2024.

² Hereinafter "SRHC Hospital"

³ Hereinafter "CrPC"



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6. The instant bail application has been moved before this Court under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023⁴, seeking regular bail.

Submissions of petitioner

7. Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the instant case and that she is neither named in the FIR dated nor apprehended from the spot at the time of the alleged recovery. The petitioner is alleged to have been roped in solely on the basis of a purported conspiracy under Section 29 of the NDPS Act, without any cogent, direct, or reliable evidence connecting her to the substantive offence under Section 21 or Section 25.

8. The petitioner has submitted that the allegations against her, even if taken at face value, do not attract the rigor of Section 37 of the NDPS Act as the quantity allegedly recovered is 30 grams, which falls within the *intermediate category* and not the commercial threshold. It is argued that the procedural compliance, especially with respect to Section 50 of the NDPS Act, was wholly deficient.

9. The personal search of the petitioner was allegedly conducted by one W/HC Sheenu, who, it is contended, was neither an empowered officer nor authorized to conduct the search under Sections 41 and 42 of the NDPS Act.

10. Further, the mandatory notice under Section 50 NDPS Act offering the petitioner the option of being searched in the presence of

⁴ Hereinafter "BNSS"



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a Magistrate or Gazetted Officer was not duly served, rendering the search and subsequent recovery vitiated in law.

11. Reliance has been placed on a catena of judgments including *State of Delhi v. Ram Avtar*⁵, *Emeka Emmanuel v. State*⁶ and *Mohd. Rahis Khan v. State*⁷, to fortify the contention that non-compliance with Section 50 renders the alleged recovery inadmissible. In addition, in *Mamta v. State of Delhi*⁸, it was observed that a search conducted by a constable or a person below the rank of empowered officer is patently illegal. The petitioner further relies on *Ikram v. State of NCT of Delhi*⁹, wherein the High Court granted bail on similar grounds of defective notice under Section 50.

12. The petitioner has also placed on record her medical condition. A medical report dated 03.12.2024 issued by the Jail Superintendent discloses that she is suffering from serious ophthalmic complications requiring surgical intervention. Given her advanced age and frailty, prolonged incarceration would be highly prejudicial to her health. It is further submitted that the petitioner has no prior criminal antecedents and is a permanent resident of Delhi. She undertakes not to tamper with evidence or influence witnesses and is willing to abide by all terms and conditions imposed by this Court.

13. In view of the above, it is prayed that the petitioner may be released on regular bail, as the trial is likely to take a considerable time and her continued incarceration serves no further purpose,

⁵ (2011) 12 SCC 207

⁶ 2022 SCC OnLine Del 4493

⁷ 2013 SCC OnLine Del 4752

⁸ 2021 SCC OnLine Del 4570



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especially when the investigation has concluded and the chargesheet stands filed.

Submissions of respondent

14. In rival submissions, learned APP has vehemently opposed the instant bail application thereby submitting that the allegations against her are serious in nature and pertain to an organized network engaged in the illicit trafficking of narcotic substances. It is argued that the petitioner is not merely an accessory but an active conspirator under Section 29 of the NDPS Act in the offence involving recovery of 300 grams of heroin from co-accused Ranjeet and Amit.

15. As per the status report, the investigation reveals that the petitioner's name surfaced during custodial interrogation of the co-accused Ranjeet and analysis of Call Detail Records¹⁰ which indicated repeated telephonic conversations between the petitioner and the co-accused. Stating the same, learned APP contends that the CDRs corroborate that the petitioner along with the co-accused persons was instrumental in arranging the supply chain and facilitating the transportation of heroin, thereby satisfying the elements of criminal conspiracy under the NDPS Act.

16. It is also argued that the recovery and search were conducted strictly in accordance with law, and that due compliance with Sections 42 and 50 of the NDPS Act was ensured. It is asserted that offences under NDPS are of a grave nature affecting the social fabric, and

⁹ **Bail Appln. No. 3707/2022**

¹⁰ Hereinafter "CDRs"



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granting bail at this juncture would severely prejudice the ongoing prosecution, as the petitioner may attempt to influence witnesses or tamper with evidence. It is also brought to the notice of this Court that her bail application has already been rejected by the learned Special Judge, NDPS, Rohini Courts, Delhi, vide order dated 05.12.2024.

17. It is further submitted that the petitioner is a habitual offender (FIR No. 157/2019 under the NDPS Act and FIR No. 686/16 under the Indian Penal Code, 1860) and it is also pertinent to state here that even the petitioner's other family members were previously involved in several cases under the NDPS Act. Therefore, in view of the unclean criminal antecedents and above submissions, it is prayed that the present bail application may be dismissed.

Analysis

18. Heard learned counsel for the parties and perused the material available on record.

Chargesheet and role of the petitioner

19. A perusal of the chargesheet reveals that the petitioner Shahida was not named in the FIR dated 29.02.2024, which pertained to the interception of an e-rickshaw near SRHC Hospital, Narela, and the alleged recovery of 300 grams of heroin from the possession of accused persons namely Ranjeet and Amit.

20. The name of petitioner Shahida surfaced during further investigation, particularly through the disclosure statement of co-accused Ranjeet dated 01.03.2024, wherein he alleged that the heroin



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was supplied and procured at the instance of Shahida, and that she played a role in the sale/purchase, procurement and routing of the contraband. This was further corroborated by the CDRs which established repeated telephonic communication between Shahida and the co-accused Ranjeet on the dates surrounding the incident. It is noted that as per the status report, a total of 56 calls were made between both the named accused persons from 10.01.2024 to 27.02.2024.

21. In pursuance of this, the police obtained permission for search of her residence, whereupon, reaching to her place, along with the raiding party and co-accused persons, Shahida was duly informed of the search and of the case registered under the NDPS Act, prior to any recovery attempt, as reflected in the chargesheet.

22. It is noteworthy that this specific factual assertion has not been denied by the applicant.

23. It is also evident from the chargesheet, that it was recorded in DD Entry No. 07 at 08:25 PM on 01.03.2024 by SI Narender to Inspector Ravi Kumar that prior compliance with Section 42 NDPS Act was undertaken before entering her premises.

24. Further, after searching her premises and recovery of 30 gms of heroin from the said premises on the even date, Shahida was arrested on 02.03.2024 and remained in judicial custody since then.

25. The chargesheet has since been filed. The status report filed also notes that the applicant is a repeat offender, with prior involvement in offences under the NDPS Act. Additionally, it is



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alleged that her close family members have also been involved in similar cases, which fact has also been disclosed by the petitioner in her disclosure statement.

26. The petitioner has also relied upon a medical report dated 03.12.2024, issued by the Jail Superintendent, asserting deteriorating ophthalmic health conditions requiring surgical care.

27. Now adverting to the adjudication of the matter in hand.

28. The petitioner's primary contention to seek bail is with regard to the non-compliance of Sections 42 and 50 of the NDPS Act.

29. Section 42 of the NDPS Act deals with the procedure of arrest, search and seizure, to be followed upon receipt of information regarding the commission of an offence.

30. In the present case, the record reflects that SI Narender made DD Entry No. 07 at 8:25 PM on 01.03.2024, recording the information received by him and informing Inspector Ravi Kumar of the intended search of Shahida's premises. The raid was thereafter conducted in the presence of W/HC Jyoti and the recovery of 30 grams of heroin was effected from the petitioner's premises.

31. The petitioner contends that her personal search was conducted by W/HC Sheenu, who is not empowered under Section 42 of the Act.

32. Under Section 42(1), only officers superior in rank to a peon, sepoy, or constable are authorized to conduct search and seizure operations.



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33. The chargesheet unequivocally records that the search and arrest of the petitioner was undertaken in the presence and under instructions of SI Narender, and by W/HC Jyoti, who holds the rank of Woman Head Constable, well above the rank of peon, sepoy, or constable. Thus, the arrest and search of the petitioner in the instant case was undertaken in light of the provisions of Section 42 of the NDPS Act.

34. In *Mamta (Supra)*, relied upon by the petitioner, the High Court held that searches by those below the rank of Head Constable are impermissible. No such infraction arises here. Hence, the plea of “unauthorized search” is founded on an incorrect assertion of fact and law. The search was carried out legally under the NDPS Act.

35. Thus, it is made out that there is *prima facie* compliance with Section 42 of the NDPS Act as the prosecution has, in fact, complied with the provisions of Section 42 of the NDPS Act by recording the prior information and sending it to the superior officer, as is evident from the chargesheet and status report. Therefore, the petitioner’s contention regarding non-compliance of Section 42 does not survive as a ground to seek bail.

36. Regarding the petitioner’s second limb of arguments, Section 50 is applicable to personal search of a person, and mandates that the person must be informed of her right to be searched in the presence of a Magistrate or Gazetted Officer.

37. The law regarding applicability and compliance of Section 50 of the NDPS Act has been widely discussed in a catena of judgments.



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Although the objective and purpose of the said provisions do not carry any ambiguity, however, in this regard, reference can be made to the judgment of the Constitution Bench of the Hon'ble Supreme Court passed in ***State of Punjab v. Baldev Singh***¹¹.

38. Perusal of the relevant paragraphs of ***Baldev Singh (Supra)*** states that before conducting search of the person of a suspect, the authorized/empowered officer has an obligation to inform the suspect that he has the right to require his search being conducted in the presence of a gazette officer or a Magistrate. The failure to inform would render the search illegal, and conviction and sentence of the accused based solely on recovery made during that search would be vitiated.

39. While non-compliance with Section 50 does not necessarily vitiate the entire trial, it does vitiate the conviction and sentence if based solely on the recovery made during such illegal search. This is because it undermines the fairness of the trial. An illicit article seized from the person of the accused during a search, which violates the mandate of Section 50 cannot be used as admissible evidence of unlawful possession under the NDPS Act. However, other material recovered during such a search may be used as relevant and legally admissible in the trial. The relevant paragraphs of ***Baldev Singh (Supra)***, necessary to understand the scope and context, are as under:

“..32. However, the question whether the provisions of Section 50 are mandatory or directory and, if mandatory, to what extent and the consequences of non-compliance with it does not strictly speaking arise in the context in which the protection has been

¹¹ (1999) 6 SCC 172



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incorporated in Section 50 for the benefit of the person intended to be searched. Therefore, without expressing any opinion as to whether the provisions of Section 50 are mandatory or not, but bearing in mind the purpose for which the safeguard has been made, we hold that the provisions of Section 50 of the Act implicitly make it imperative and obligatory and cast a duty of the investigating officer (empowered officer) to ensure that search of the person (suspect) concerned is conducted in the manner prescribed by Section 50, by intimating to the person concerned about the existence of his right, that if he so requires, he shall be searched before a gazetted officer or a Magistrate and in case he so opts, failure to conduct his search before a gazetted officer or a Magistrate would cause prejudice to the accused and render the recovery of the illicit article suspect and vitiate the conviction and sentence of the accused, where the conviction has been recorded only on the basis of the possession of the illicit article, recovered during a search conducted in violation of the provisions of Section 50 of the Act. The omission may not vitiate the trial as such, but because of the inherent prejudice which would be caused to an accused by the omission to be informed of the existence of his right, it would render his conviction and sentence unsustainable. The protection provided in the section to an accused to be intimated that he has the right to have his personal search conducted before a gazetted officer or a Magistrate, if he so requires, is sacrosanct and indefeasible — it cannot be disregarded by the prosecution except at its own peril.

33. The question whether or not the safeguards provided in Section 50 were observed would have, however, to be determined by the court on the basis of the evidence led at the trial and the finding on that issue, one way or the other, would be relevant for recording an order of conviction or acquittal. Without giving an opportunity to the prosecution to establish at the trial that the provisions of Section 50 and, particularly, the safeguards provided in that section were complied with, it would not be advisable to cut short a criminal trial.

57. On the basis of the reasoning and discussion above, the following conclusions arise:

(1) That when an empowered officer or a duly authorised officer acting on prior information is about to search a person, it is imperative for him to inform the person concerned of his right under sub-section (1) of Section 50 of being taken to the nearest gazetted officer or the nearest Magistrate for making the search. However, such information may not necessarily be in writing.



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(2) That failure to inform the person concerned about the existence of his right to be searched before a gazetted officer or a Magistrate would cause prejudice to an accused.

(3) That a search made by an empowered officer, on prior information, without informing the person of his right that if he so requires, he shall be taken before a gazetted officer or a Magistrate for search and in case he so opts, failure to conduct his search before a gazetted officer or a Magistrate, may not vitiate the trial but would render the recovery of the illicit article suspect and vitiate the conviction and sentence of an accused, where the conviction has been recorded only on the basis of the possession of the illicit article, recovered from his person, during a search conducted in violation of the provisions of Section 50 of the Act.

(4) That there is indeed need to protect society from criminals. The societal intent in safety will suffer if persons who commit crimes are let off because the evidence against them is to be treated as if it does not exist. The answer, therefore, is that the investigating agency must follow the procedure as envisaged by the statute scrupulously and the failure to do so must be viewed by the higher authorities seriously inviting action against the official concerned so that the laxity on the part of the investigating authority is curbed. In every case the end result is important but the means to achieve it must remain above board. The remedy cannot be worse than the disease itself. The legitimacy of the judicial process may come under a cloud if the court is seen to condone acts of lawlessness conducted by the investigating agency during search operations and may also undermine respect for the law and may have the effect of unconscionably compromising the administration of justice. That cannot be permitted. An accused is entitled to a fair trial. A conviction resulting from an unfair trial is contrary to our concept of justice. The use of evidence collected in breach of the safeguards provided by Section 50 at the trial, would render the trial unfair.

(5) That whether or not the safeguards provided in Section 50 have been duly observed would have to be determined by the court on the basis of the evidence led at the trial. Finding on that issue, one way or the other, would be relevant for recording an order of conviction or acquittal. Without giving an opportunity to the prosecution to establish, at the trial, that the provisions of Section 50 and,



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particularly, the safeguards provided therein were duly complied with, it would not be permissible to cut short a criminal trial.

(6) That in the context in which the protection has been incorporated in Section 50 for the benefit of the person intended to be searched, we do not express any opinion whether the provisions of Section 50 are mandatory or directory, but hold that failure to inform the person concerned of his right as emanating from sub-section (1) of Section 50, may render the recovery of the contraband suspect and the conviction and sentence of an accused bad and unsustainable in law.

(7) That an illicit article seized from the person of an accused during search conducted in violation of the safeguards provided in Section 50 of the Act cannot be used as evidence of proof of unlawful possession of the contraband on the accused though any other material recovered during that search may be relied upon by the prosecution, in other proceedings, against an accused, notwithstanding the recovery of that material during an illegal search....”

40. However, it is prudent to note here that the aforesaid provision of Section 50 applies only in the case of search of the person of suspect, pursuant to the apprehension of recovery of narcotics under the NDPS Act stand not to search of premises. In ***Vijaysinh Chandubha Jadeja v. State of Gujarat***¹², the Hon’ble Supreme Court reiterated the mandatory nature of informing the accused of the right, but again within the context of personal search. Similar observation was also made in a recent judgment of the Hon’ble Supreme Court in ***State of Kerala v. Prabhu***¹³, which states as under:

“7. Thus, it is evident that the exposition of law on the question regarding the requirement of compliance with Section 50 of the NDPS Act is no more res integra and this Court in unambiguous term held that if the recovery was not from the

¹² (2011) 1 SCC 609

¹³ 2024 SCC OnLine SC 5300



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person and whereas from a bag carried by him, the procedure formalities prescribed under Section 50 of the NDPS Act was not required to be complied with. It is to be noted that in the case on hand also the evidence indisputably established that the recovery of the contraband was from the bag which was being carried by the respondent.”

41. With respect to the facts of the instant matter, it is observed that the petitioner was not subjected to a personal search, yielding recovery of any narcotics, rather, the recovery of 30 grams of Heroin was from her residential premises, and not her person.

42. The search of her person was conducted post-arrest, in a routine manner, and a mobile phone was recovered, which, later on, during investigation, as per the chargesheet, corroborates the fact that she was indeed in regular contact with the co-accused persons namely Ranjeet, Amit and Zakir. Even though the same is actually a matter of trial, yet, at this stage, while deciding bail, this Court does not find any reason to accept the applicability of Section 50.

43. The chargesheet and status report reveal that due permission was sought before the search was conducted. The applicant's contention that she was not informed about her rights is belied by the record, which shows that she was duly informed about the case and the impending search beforehand, a fact which has not been denied by the petitioner.

44. Furthermore, recovery of 30 gms of heroin, from petitioner's premises, has to stand trial to prove whether it belonged to Shahida, and recovery of the said contraband, as such, is not affected by any illegality due to the alleged non-compliance of Sections 42 and 50 of



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the NDPS Act. Hence, the contention regarding non-compliance with Section 50 of the NDPS Act is untenable and devoid of merit.

45. The reliance placed by the defence on ***Mohd. Rahis Khan (Supra)*** or ***Emeka Emmanuel (Supra)*** is also misplaced as those judgments pertain to cases where the contraband was recovered from the person of the accused. In contrast, here, the recovery is from the petitioner's premises, after obtaining prior permission and complying with Section 42.

46. Insofar the contention of the petitioner as regards to the purported conspiracy under Section 29 of the NDPS Act, without any cogent, direct, or reliable evidence connecting her to the substantive offence under Section 21 or Section 25 is concerned, the record reveals otherwise. It is observed from the record that the role of the applicant, Shahida, was disclosed on 01.03.2025 by co-accused Ranjeet, and it was at his instance that the applicant was arrested. The chargesheet further reveals that during her interrogation, the applicant admitted that she had received the recovered heroin from Ranjeet 10-12 days earlier.

47. This material evidence, along with the fact that the applicant has a history of previous FIRs pending against her (FIR No. 157/2019 under the NDPS Act and FIR No. 686/16 under the Indian Penal Code, 1860), as well as the fact that her family members are also involved in NDPS cases, paints a grim picture of a family deeply entrenched in a drug cartel.



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48. The allegations against the petitioner are of a very serious nature, involving the possession of a narcotic drug and if looked at it from a macro view, although the recovery from the premises of the petitioner is merely 30 gms, however, the disclosure of 150 gms of heroin being supplied earlier, the frequency of calls (CDRs), the recovery of 300 gms from the co-accused persons and the involvement of another accused persons namely Zakir, shows the intricate nexus, use and supply of drugs (*modus operandi*). The recovery of 30 grams of Heroin from her premises is a weighty piece of evidence. Her prior criminal history and her family's involvement in similar offences strongly suggest that she is continuously involved in the crime, and thus a potential threat to the fabric of society, therefore, the petitioner's contention with regard to Section 29 of the NDPS Act does not hold any water.

49. At this stage, it is imperative to note that the petitioner has sought bail also on the medical grounds. The petitioner has relied upon a Medical Report dated 03.12.2024 to demonstrate her suffering from ophthalmological ailments. While the Court is not unsympathetic to medical conditions, it must balance the same against the seriousness of the alleged offence. The medical report does not indicate an immediate life-threatening condition or incapacity to be treated within jail premises.

Conclusion

50. In view of the above discussions of facts and law, this Court is not inclined to release the petitioner on bail and the instant bail



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application, is hereby, dismissed along with the pending applications, if any. No orders as to costs.

51. It is clarified that nothing stated herein shall be construed as an expression of opinion on the merits of the case.

52. The judgment be uploaded on the website forthwith.

AJAY DIGPAUL, J

AUGUST 14, 2025/gs/ryp