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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 317/2025 & CRL.M.A. 2249/2025**

VICKYApplicant
Through: Ms. Sunita Arora,
Advocate from DHCLSC.

versus

STATE NCT OF DELHIRespondent
Through: Ms. Richa Dhawan, APP
for the State.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN
ORDER
% **29.07.2025**

1. The present application is filed seeking regular bail in FIR No. 792/2021 dated 01.07.2021 for offences under Sections 8(C)/21/22 of the Narcotics Drugs and Psychotropic Substances Act, 1985 ('**NDPS Act**') registered at Police Station Mangolpuri.
2. It is alleged that on 01.07.2021, a secret information was received regarding the illegal supply of injections and packets of heroin by the applicant at Aam Aadmi Mohalla Clinic, Y- Block, Mangolpuri, Delhi, who used to procure the same from one person namely-Kamal and his brother Anand. Subsequently, a raiding party was constituted, and thereafter a raid was conducted at Y- Block, Mangolpuri, Delhi.
3. During the raid, the applicant, who was seen carrying a brown and grey bag, was apprehended by the raiding team after being identified by the secret informer. Upon the search of his bag, 30 packets of Heroin (weighing about 12.30 gram) and 20



injections of Buprenorphine 0.2mg each was allegedly recovered from the applicant.

4. Subsequently, the bag carrying the contraband was seized, sealed and taken into possession, and the applicant was arrested on 02.07.2021.

5. The chargesheet has been filed and charges have been framed against the applicant under Sections 21(b)/22(c) of the NDPS Act in the year 2023.

6. The learned counsel for the applicant submits that the applicant has been falsely implicated in the present case. She submits that there are serious infirmities in the case of the prosecution and no public witnesses have been cited.

7. She submits that the alleged recovery of contraband from the applicant is intermediate quantity and therefore the rigors of Section 37 of the NDPS Act are not attracted in the present case.

8. She submits that the applicant has already undergone 4 years in custody and now only formal police witnesses are left to be examined.

9. *Per contra*, the learned Additional Public Prosecutor for the State vehemently opposes the grant of bail to the applicant. She submits that the applicant is involved in many other cases under the Delhi Excise Act, 2009.

10. She submits that commercial quantity of contraband has been recovered from the applicant in the present case and the rigours of Section 37 of the NDPS Act are thus attracted against the applicant.

11. It is settled law that the Court, while considering the application for grant of bail, has to keep certain factors in mind, such as, whether there is a *prima facie* case or reasonable ground



to believe that the accused was committed the offence; circumstances which are peculiar to the accused; likelihood of the offence being repeated; the nature and gravity of the accusation; severity of the punishment in the event of conviction; the danger of the accused absconding or fleeing if released on bail; reasonable apprehension of the witnesses being threatened; etc. However, at the same time, the period of incarceration is also a relevant factor that is to be considered.

12. It is unequivocally established that, grant of bail on account of delay in trial cannot be said to be fettered by the embargo under Section 37 of the NDPS Act. The Hon'ble Apex Court, in the case of **Mohd. Muslim v. State (NCT of Delhi) : 2023 SCC OnLine SC 352** has observed as under:

“21....Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (ref. Satender Kumar Antil supra). Having regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail.

22. Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable. Jails are overcrowded and their living conditions, more often than not, appalling. According to the Union Home Ministry's response to Parliament, the National Crime Records Bureau had recorded that as on 31st December 2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,069 lakhs in the country²⁰. Of these 122,852 were convicts; the rest 4,27,165 were undertrials.

23. The danger of unjust imprisonment, is that inmates are at risk of “prisonisation” a term described by the Kerala High Court in A Convict Prisoner v. State²¹ as “a radical transformation” whereby the prisoner:

“loses his identity. He is known by a number. He loses personal possessions. He has no personal relationships.



Psychological problems result from loss of freedom, status, possessions, dignity any autonomy of personal life. The inmate culture of prison turns out to be dreadful. The prisoner becomes hostile by ordinary standards. Self-perception changes.”

24. There is a further danger of the prisoner turning to crime, “as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal”²² (also see Donald Clemmer's ‘The Prison Community’ published in 1940²³). Incarceration has further deleterious effects - where the accused belongs to the weakest economic strata : immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials - especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily.”

(emphasis supplied)

13. The Hon’ble Apex Court in **Rabi Prakash v. State of Odisha : 2023 SCC OnLine SC 1109**, while granting bail to the petitioner therein held as under :

“4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent - State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.”

14. The Hon’ble Apex Court in **Badsha SK. v. The State of West Bengal** (order dated 13.09.2023 passed in **Special Leave Petition (Crl.) 9715/2023**), granted bail to the petitioner wherein who had been in custody for more than two years with the trial yet to begin.



15. Similarly, in ***Man Maan & Anr. v. The State of West Bengal*** (order dated 14.09.2023 passed in **Special Leave Petition (Crl.) 8656/2023** decided on 14.09.2023), the petitioner therein had been in custody for almost two years and the Hon'ble Apex Court found that the trial is not likely to be completed in the immediate near future. The petitioner was, therefore, released on bail.

16. From the foregoing, it is evident that despite the stringent requirements imposed on the accused under Section 37 of the NDPS Act for the grant of bail, it has been established that these requirements do not preclude the grant of bail on the grounds of undue delay in the completion of the trial. Various courts have recognized that prolonged incarceration undermines the right to life, liberty, guaranteed under Article 21 of the Constitution of India, and therefore, conditional liberty must take precedents over the statutory restrictions under Section 37 of the NDPS Act.

17. In so far as the argument that the applicant is involved in more cases, the Hon'ble Apex Court in the case of ***Prabhakar Tiwari v. State of U.P. : (2020) 11 SCC 648*** has held that the involvement of the accused in other cases cannot be the sole ground for dismissal of the bail application. Moreover, perusal of the Previous Conviction Report reveals that all the prior criminal involvements of the applicant are in relation to the offences under the Delhi Excise Act, 2009 and not under the NDPS Act.

18. It is also not denied that the process of search and seizure in the present case was carried out in the absence of any public witnesses.

19. The learned counsel for the applicant disputes the recovery made from the personal search of the applicant and further states



that the contraband was planted. There is no other evidence about the recovery of contraband from the applicant except the Police witnesses. Whether the contraband was planted on the applicant would be tested during the trial.

20. On the basis of the secret information, through the recovery was made from the applicant in a public place and in broad day light, there is an absence of any public witness. This Court in the case of **Bantu v. State Govt of NCT of Delhi (supra)** has observed that while the testimony of police witness is sufficient to secure conviction if the same inspires confidence during the trial, however, lack of independent witnesses in certain cases can cast a doubt as to the credibility of the prosecution's case.

21. The applicant is in custody since 02.07.2021 and has already spent more than 4 years in judicial custody. At this stage, the charge sheet has already been filed and the applicant is no longer required for custodial interrogation, since the investigation is already complete and there is no chance of the accused absconding or fleeing, if released on bail. Moreover, the same can also be taken care of by putting appropriate conditions.

22. The trial is at the stage of prosecution evidence and is not likely to conclude in near future. In such circumstances, no purpose will be served by keeping the applicant in further incarceration.

23. The object of Jail is to secure the appearance of the accused during the trial. The object is neither punitive nor preventive and the deprivation of liberty has been considered as a punishment. The applicant cannot be made to spend the entire



period of trial in custody specifically when the trial is likely to take considerable time.

24. The applicant is stated to be a young man, belonging to a poor strata of society, prolonged incarceration may itself result in the denial of his fundamental right to life and liberty guaranteed under Article 21 of the Constitution of India.

25. No apprehension has been raised about the witnesses being influenced or the evidence being tampered by the applicant. The presence of the accused can be secured at the time of trial by putting appropriate conditions.

26. Without commenting further on the merits of the case, keeping the facts and circumstances in mind and the fact that the trial is likely to take some time, I am satisfied that the applicant has made out a case for grant of regular bail.

27. In view of the above, the applicant is directed to be released on bail in in FIR No. 792/2021, on furnishing a personal bond in the sum of ₹10,000/- with two sureties of the like amount, subject to the satisfaction of the Trial Court/Duty Metropolitan Magistrate on the following conditions:

- a. The applicant shall under no circumstances, leave the boundaries of National Capital Region without informing the concerned IO.
- b. The applicant shall provide the address of where he would be residing after his release and shall not change the address without informing the concerned IO/SHO;
- c. The applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep it at switched on mode at all times;
- d. The applicant shall appear before the concerned Court as



and when the matter is taken up for hearing;

- e. The applicant shall not indulge in any act or omission that is unlawful, illegal or that would prejudice the proceedings;
 - f. The applicant shall not tamper with any of the evidences in any way or contact any of the witnesses, while on bail.
28. The bail application is disposed of in the aforesaid terms alongwith the pending application.
29. It is clarified that observations made in the present case are only for the purpose of considering the bail application and should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

AMIT MAHAJAN, J

JULY 29, 2025