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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 630/2025

MOHD.UMAR

.....Applicant

Through: Mr. Bibek Tripathi, Mr.
Ajay Kumar Shrivastava
Mr. Sudhakar Tiwari and
Mr. Manoj Kumar,
Advocates.

versus

STATE OF GNCT OF DELHI

.....Respondent

Through: Ms. Priyanka Dalal, APP
for the State with Insp.
Santosh Kumar Gupta, PS
Timarpur and Insp.
Pradeep Kumar Singh, PS
Kashmere Gate.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

15.10.2025

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1. The present application is filed seeking regular bail in FIR No. 261/2024 dated 09.05.2024 registered at Police Station Kashmeri Gate for the offences under Sections 22/25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act')
2. Briefly stated, on 09.05.2024, on the basis of a secret information pertaining to the transport of restricted medicine, a raiding team was constituted and accused Brijesh was apprehended. Thereafter, the auto which the accused Brijesh was



driving was searched and a recovery of 2.16 kg of restricted medicine, that is, 30 Packets (18000 tablets of Alprazolam) was effected. It is alleged that thereafter, on the instance of accused Brijesh, co-accused Amar Singh was apprehended and a recovery of 2.16 Kg of Alprazolam tablets was made from a polythene bag being carried by him.

3. Thereafter, on 11.05.2024, at the instance of co-accused Amar Singh, a raid was conducted at Aligarh, Uttar Pradesh pursuant to which co-accused Faiz and the applicant were apprehended. Thereafter, three *gatta peti* containing a total of 180000 tablets of Alprazolam weighing 21.6 Kg was found, and the same were recovered. During interrogation, the co-accused persons – Faiz Ahmad and the applicant disclosed that they had stored restricted medicine at a shop situated at Gali No. 05 Loco Colony, Aligarh, Uttar Pradesh.

4. It is alleged that thereafter, a raid was conducted at the said shop and a recovery of 3,12,000 restricted tablets of Alprazolam, weighing approximately 39.960 Kg was made.

5. Subsequently, on the basis of the disclosure statement of co-accused Faiz, on 17.05.2024, a raid was conducted and co-accused Aamir was apprehended and a recovery of 20 tablets of Buprenorphine, 207 Avil Injections, 6000 capsules of Tramadol weighing 3.180 Kg, 100 needles and 11 syringes were recovered.

6. Thereafter, on the basis of the disclosure statement of the applicant, a raid was conducted on 19.05.2024 and co-accused Naved was apprehended. Further, a recovery of a total of 8400 capsules weighing 4.452 Kg and 73 Codeine Syrup weighing 7.3 litres was made.



7. Further, on the disclosure statement of the applicant, on 22.05.2024, a raid was conducted at Mathura, pursuant to which co-accused Gaurav Aggarwal was apprehended and a recovery of a total of 6960 capsules weighing 3.695 Kg and 450 tramadol injections weighing 900 ml and 10200 Alprazolam tablets weighing 1.122 Kg was effected. Another raid was conducted on 23.05.2024 pursuant to which co-accused Koshinder was apprehended and a recovery of 6000 capsules of Tramadol weighing 3.180 Kg was made.

8. During the course of the investigation, it was found that the applicant was the proprietor of Bright Pharma that had purchased the recovered restricted medicines. Further investigation revealed that the applicant had forged the rent agreements to receive Central GST, current account and drug license in the name of Bright Pharma.

9. The applicant was arrested on 11.05.2024 and is in custody since then.

10. The learned counsel for the applicant submits that the applicant is innocent and has been falsely implicated in the present case. He submits that the applicant is a registered proprietor of Bright Pharma, a licensed pharmaceutical distributor and is operating under a valid drugs license.

11. He submits that the investigation in the present case is riddled with manifest infirmities that renders the entire case of the prosecution nebulous. He submits that the Investigating Officer in the present case has been suspended and the Head constable who recorded the secret information has been dismissed on the allegation of extortion.



12. He submits that as per the case of the prosecution the applicant alongwith co-accused Faiz were carrying 3 cartons on a battery rickshaw, and from the said cartons, an alleged recovery of 180000 tablets of Alprazolam weighing 21.6 Kg was made. He submits that despite the same, no independent witnesses were made to join the investigation. He submits that the absence of independent witnesses especially when there are aspersions in relation to the misconduct of officers in the present case casts serious doubts on the veracity of the case of the prosecution.

13. He submits that the applicant has been languishing in custody since 11.05.2024. He submits that a total of 48 witnesses has been cited as prosecution witnesses and their examination is yet to commence. He submits that in such circumstances, the trial is not likely to conclude in the near future. He consequently prays that the applicant be enlarged on bail.

14. *Per contra*, the learned Additional Public Prosecutor vehemently opposes the grant of any relief to the applicant. She submits that the applicant is the chief source of the restricted recovered medicines. She submits that there is an effective recovery of 08 cartons of Alprazolam tablets weighing 61.560 Kg from the co-accused Faiz and the applicant which is a commercial quantity thereby attracting the bar under Section 37 of the NDPS Act. She submits that insofar as the drug license of Bright Pharma is concerned, the given address reflects that the premises were being used for running some Rafiq Dental Clinic. She submits that the applicant obtained the drug license by forging rent agreements.

15. I have heard the counsel and perused the record.



16. 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 has 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.

17. It is unequivocally established that, to be granted bail, the accused charged with offence under the NDPS Act must fulfil the conditions stipulated in Section 37 of the NDPS Act. Section 37 of the NDPS Act reads as under:

“37. Offences to be cognizable and non-bailable.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)—

- (a) every offence punishable under this Act shall be cognizable;*
- (b) no person accused of an offence punishable for offences under Section 19 or Section 24 or Section 27-A and also for offences involving commercial quantity shall be released on bail or on his own bond unless—*
 - (i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and*
 - (ii) where the Public Prosecutor oppose the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.*

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974), or any other law for the time being in force, on granting of bail.”



18. It is the case of the prosecution that the applicant is the source of the recovered restricted medicines. It is further the case of the prosecution that a recovery of 180000 tablets of Alprazolam weighing 21.6 Kg was made from the applicant and co-accused Faiz at the time when they were apprehended. It is further the case of the prosecution that during interrogation, the co-accused persons – Faiz Ahmad and the applicant disclosed that they had stored restricted medicine at a shop and upon a raid conducted at the said shop, a recovery of 3,12,000 restricted tablets of Alprazolam, weighing approximately 39.960 Kg was made. It is claimed that the drug license was obtained by the applicant by forging rent agreements and that the drugs were illegally stored by the applicant.

19. The learned counsel for the applicant has emphasized that doubt is cast on the recovery of the contraband as no independent witness was joined by the prosecution and no photography or videography was done even though the applicant was apprehended in a public place.

20. It is not in doubt that the case of the prosecution cannot be rejected merely on account of the case being tethered on the testimonies of official witnesses and non-examination of independent witnesses or absence of photography and videography of the recovery. The same would not be fatal to the prosecution's case.

21. It is also not in dispute that the reliance on the testimonies of official witnesses is sufficient to secure conviction once it is established that the police witnesses have no animosity against the accused person so as to falsely implicate him. The



testimonies of the official witnesses cannot be disregarded merely on account of them being police officials.

22. It can however not be denied that the lack of independent witnesses and photography or videography, in some circumstances, casts a shadow over the case of the prosecution.

23. This Court in the case of ***Bantu v. State Govt of NCT of Delhi: 2024: DHC: 5006*** has observed that while the testimony of independent 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. It was held that when the Investigating Agency had sufficient time to prepare before the raid was conducted, not finding the public witness and lack of photography and videography in today's time casts a doubt to the credibility of the evidence.

24. In the present case, the seizure memo mentions that although 4-5 passersby and 2-3 battery rickshaw drivers were asked to join the investigation, however, they refused to join the same. While the truthfulness of the explanation rendered by the prosecution for non-joinder of independent witnesses and for absence of photography and videography will be tested during the course of the trial, at this stage, the benefit cannot be denied to the applicant especially when the officers associated with the raid and investigation have been suspended on the allegation of extortion from the accused persons.

25. The prosecution has also emphasised on the fact that since commercial quantity of contraband was recovered from the applicant and co-accused Faiz, therefore, the rigours of Section



37 of the NDPS Act are attracted against him.

26. The Hon'ble Apex Court, in the case of ***Union of India v. Shiv Shanker Kesari*** : (2007) 7 SCC 798, has observed as under:

"11. The court while considering the application for bail with reference to Section 37 of the Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty.

12. Additionally, the court has to record a finding that while on bail the accused is not likely to commit any offence and there should also exist some materials to come to such a conclusion."

27. *Prima facie*, in the absence of any independent corroboration linking the applicant to the crime, at this stage, the bar of Section 37 of the NDPS Act cannot be applied. Thus, while the case involves a huge recovery of contraband, in the opinion of this Court, at this stage, there are reasonable grounds to doubt the credibility of the case of the prosecution against the applicant.

28. The applicant has also contended that he is a medical store owner and could legally store medical drugs in a large quantity. The learned Additional Public Prosecutor for the State on the other hand has disputed the same and has argued that even the license was obtained by forging rent agreements. Insofar as the allegation pertaining to the absence of a valid license or the drug license of the applicant being based on forged rent agreements is concerned, this Court does not wish to comment upon the



intricacies of the contradictions pointed out as the same would be examined during the course of the trial and cannot be looked into at this stage. The defence and the allegations in this regard can only be ascertained after the evidence is led.

29. At this stage, this Court deems it apposite to note that the manner in which the investigation has been carried out in the present case casts serious aspersions on the veracity of the case of the prosecution.

30. As pointed out above, the Investigating Officer assigned to the present case previously has been suspended and the Head Constable who had recorded the secret information has been dismissed on the allegations of extortion.

31. It is pertinent to mention that this Court, by order dated 16.01.2025 in BAIL APPLN. 3541/2024, had enlarged one co-accused namely Koshinder on regular bail taking into account the conduct of the prosecution which led this Court to opine that *prima facie* there were reasonable grounds to believe that the accused was not guilty. The said co-accused was sought to be implicated on the allegations that some restricted medication was recovered from a bag being carried by him, however, the CCTV footage of the alleged spot of recovery showed that he was not carrying any bag at all. It was also noted that the prosecution had not taken any prompt steps to preserve the relevant CCTV footage despite the orders passed by the learned Trial Court.

32. It is also relevant to note that this Court by order dated 08.08.2025 in BAIL APPLN. 1082/2025 while granting bail to co-accused Naved had taken note of the CCTV footage from the camera that was installed in the medical store where the raid was



conducted. The said co-accused was also a medical store owner and the camera footage of the store where the police had conducted a raid was allegedly being shut by one of the members of the raiding team. The said footage was also not being taken on record by the police.

33. From the aforesaid, it is apparent that there are serious lapses in the manner in which the investigation has been carried out in the present case. The conduct of the police officers during the course of investigation creates a serious doubt regarding the version of the prosecution and the chances of the false implication of the applicant cannot be ruled out at this stage and will be subject matter of trial.

34. It is also relevant to note that the applicant has been languishing in custody since 11.05.2024 and the matter is still at the stage of examination of prosecution witnesses. The prosecution has cited 48 prosecution witnesses and their examination will take a long time.

35. It is trite that grant of bail on account of delay in trial and long period of incarceration 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)

36. 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.***

(emphasis supplied)

37. 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. Various courts have recognized that prolonged incarceration undermines the right to life, and liberty, guaranteed under Article 21 of the Constitution of India, and therefore, conditional liberty must take precedent over the statutory restrictions under Section 37 of the NDPS Act.

38. In view of the aforesaid factors, this Court is of the opinion that the applicant has made out a *prima facie* case for grant of bail.

39. The applicant is, therefore, directed to be released on bail (if not in custody in any other case) on furnishing a personal bond for a sum of ₹20,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court, on the following conditions:

- a. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
- b. The applicant shall under no circumstance leave



the country without the permission of the Trial Court;

- c. The applicant shall appear before the learned Trial Court as and when directed;
- d. The applicant shall provide the address where he would be residing after his release to the concerned IO/SHO and he shall not change the address without informing the concerned IO/SHO;
- e. The applicant shall, upon his release, give his mobile number to the concerned IO and shall keep his mobile phone switched on at all times.

40. In the event of there being any FIR/DD entry / complaint lodged against the applicant; it would be open for the State to seek redressal by filing an application seeking cancellation of bail.

41. It is clarified that any observations made in the present order are for the purpose of deciding the present 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.

42. The present bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

OCTOBER 15, 2025

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