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

Reserved on: 03.11.2025
Date of Decision: 20.11.2025

+ **BAIL APPLN. 978/2025**

IMRAN KHAN

.....Petitioner

Through: Mr. Babu Lal, Adv.

versus

THE STATE GOVT. OF NCT OF DELHIRespondent

Through: Ms. Meenakshi Dahiya, APP
for State with Ms. Divya Bakshi, Adv.

CORAM:

HON'BLE MR. JUSTICE AJAY DIGPAUL

J U D G M E N T

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1. The present bail application under Section 483 of the Bhartiya Nagarik Suraksha Sanhita, 2023¹ (earlier Section 439 of the Code of Criminal Procedure, 1973²) has been filed on behalf of the petitioner/applicant/accused seeking regular bail in FIR No. 123/2023, registered at Police Station Crime Branch for the offences punishable under Sections 21/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985³.

Factual Matrix

2. On 21.05.2023, a secret information was received by ASI Kirori Mal that one Imran Khan @ Sahil, aged about 20 years, would come

¹ Hereinafter "BNSS"

² Hereinafter "CrPC"

³ Hereinafter "NDPS"



near Keshavpur Mandi – MCD Toilet – Ambedkar Park area, Khayala, for supply of heroin. The said information was reduced into writing and informed to senior officers. A raiding team comprising SI Pankaj, ASI Kirori Mal, SI Ram Kishan, ASI Sandeep, HC Sanwar Mal and W/HC Anita was constituted, and a trap was laid at the spot.

3. At around 18:10 hours, a person wearing red T-shirt and blue jeans was identified by the secret informer as Imran Khan @ Sahil. The police apprehended him near Ambedkar Park at about 18:15 hours. Notice under Section 50 of the NDPS Act was served. From the right pocket of his blue jeans pant, a white transparent plastic polythene packet tied with red rubber band allegedly containing light pink powder was recovered.

4. On field testing, it was allegedly found to be heroin and on weighment it was 269 grams, which is a “commercial quantity” under the NDPS Act. The present FIR was thus registered.

5. It is on record that the applicant was formally arrested on 22.05.2023 at about 01:30 hours. After arrest of Imran, on the basis of further investigation, co-accused Mehboob and Anwar, residents of Bisaratanj, District Bareilly, U.P., were arrested. From them “nil recovery” was recorded, however they were arrested on alleged disclosure and CDR analysis linking them with the applicant. CDRs of all three were analysed and the prosecution claims telephonic contacts between 19.05.2023 and 21.05.2023. It is the prosecution case that the main kingpin “Bazid” is yet to be arrested and has been declared Proclaimed Offender by the learned Trial Court.

6. Sampling was carried out on 23.06.2023 under Section 52A of the NDPS Act and exhibits were sent to FSL Rohini on 28.06.2023.

The FSL result dated 19.10.2023 is positive for heroin constituents.



The charge sheet has been filed. The status report records that the total recovery in the case is 269 grams heroin and Section 37 NDPS bar applies.

7. Two co-accused persons Mehboob and Anwar have already been granted regular bail by the Coordinate Bench of this Court on 09.02.2024 and 28.03.2024 respectively.

8. The applicant continues to be in judicial custody since 21.05.2023. The present second bail application is filed against the order dated 05.06.2024 of learned ASJ. The case continues to be pending for trial and it is stated that as of now, only 1 witness has been examined.

Submissions on behalf of the petitioner

9. Mr. Babu Lal, learned counsel for the petitioner submits that he is innocent, that he has been falsely implicated, that the entire case rests on secret information and disclosure statements, and that there is no direct incriminating material against him except a disclosure of co-accused, which is inadmissible in evidence without independent corroboration. Reliance is placed on *Tofan Singh v. State of Tamil Nadu*⁴ and *Dheeraj Kumar Shukla v. State of U.P.*⁵.

10. It is submitted that the sampling was not drawn at the spot and sample was sent to FSL after more than 72 hours which creates severe doubt of tampering of seal, quantity and chain-of-custody. It is further submitted that the entire search, seizure, personal search, detention and procedural steps, including receipt and reduction of information in writing, compliance of Sections 41/42/50/52/52A/53 of the NDPS

⁴ (2021) 4 SCC 1
⁵ 2023 SCC OnLine SC 918



Act, were not done in the manner mandated by statute and thus, mandatory procedural safeguards stand violated. It is submitted that the personal search was done by ASI, who was not competent, duly authorized or empowered under Section 53 of the NDPS Act.

11. It is submitted that the prosecution has also failed to comply with the mandatory safeguards prescribed under Section 100 CrPC while conducting the alleged personal search and seizure. Even assuming difficulty in securing the presence of a Gazetted Officer under Section 50 NDPS Act, the law expressly mandates that the search be carried out strictly in accordance with Section 100 CrPC, as there is no bar on applicability of CrPC to NDPS searches. However, there were no independent witnesses recorded. The failure to follow statutory procedure amounts to a deliberate departure from the protections guaranteed to an accused

12. There is no mention of presence of any independent public witness, though the spot is a public place, and there is no contemporaneous disclosure of what transpired between 18:30 hours on 21.05.2023 and 01:35 hours on 22.05.2023, when arrest memo was prepared. The charge sheet has been filed, 16 police witnesses are cited, trial has not commenced till date, and therefore, continued incarceration violates fundamental rights and the concept of speedy trial. Further, co-accused Mehboob and Anwar have already been granted regular bail by the High Court and therefore parity operates.

13. It is urged that the applicant is a tailor by occupation, has no previous criminal involvement, is the sole bread earner of his family, and that he undertakes to cooperate with the trial, will not abscond, and will abide by conditions of bail. Consequently, the petitioner



prays for grant of regular bail on merits and on parity, and on the ground of prolonged incarceration as well as completed investigation.

Submissions on behalf of the State

14. Ms. Meenakshi Dahiya, learned APP appearing on behalf of the State strongly opposes the grant of bail. It is submitted that from the possession of the applicant Imran Khan @ Sahil, 269 grams heroin was recovered, which is a *commercial quantity* as per NDPS Act and therefore, the statutory bar under Section 37 of the NDPS Act is attracted which the applicant does not satisfy in any manner.

15. It is submitted that the applicant was apprehended at the spot near Ambedkar Park, Khayala on 21.05.2023, after secret information was reduced into writing, conveyed to senior officer and proper proceedings were initiated under Section 42 of the NDPS Act. Notice under Section 50 of the NDPS Act was duly served and thereafter, the contraband was recovered from the right pocket of his blue jeans.

16. It is further submitted that the role of the present applicant is distinct from the co-accused who were granted bail, because commercial quantity recovery has taken place only from the applicant and *nil* recovery was made from the two other accused persons. The disclosure of the applicant led to tracing of co-accused Anwar and Mehboob at Bisaratanj, U.P., and that the CDR/location analysis shows frequent communication *inter se* the accused around the relevant dates, and these facts link the applicant with the supply chain.

17. It is submitted that the seizure and arrest was done on 21.05.2023, and the application for sampling was made before the learned Trial Court on 22.05.2023. The order for sampling under Section 52A of the NDPS Act was passed on 23.06.2023. The FSL



result is positive for heroin constituents. Therefore, the allegation of “delay” or “tampering” is unfounded and contrary to record. Charge sheet stands filed and charges have been framed. The case is at the stage of prosecution evidence.

18. It is submitted that the applicant, if enlarged on bail, may repeat the offence and may abscond. It is also submitted that the main kingpin “Bazid” is yet to be arrested and enlargement of the applicant at this stage would prejudice the further progress of the case. On these grounds, the State prays for dismissal of the present bail application in view of the rigours of Section 37 of the NDPS Act.

Analysis

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

20. At the outset, this Court has carefully considered the rival submissions and examined the record. The FIR, chargesheet and the contemporaneous documents show that on 21.05.2023, at about 16:40 hours, ASI Kirori Mal received specific information regarding the movement of the applicant Imran Khan @ Sahil for supply of heroin near Keshavpur Mandi–MCD Toilet–Ambedkar Park area, Khayala. The information was immediately reduced into writing and conveyed to senior officer as required under Section 42 of the NDPS Act.

21. A raiding team comprising SI Pankaj, ASI Kirori Mal, SI Ram Kishan, ASI Sandeep, HC Sanwar Mal and W/HC Anita was constituted. At about 18:10–18:15 hours, the applicant was identified by the secret informer and apprehended. The record reflects that a notice under Section 50 of the NDPS Act was served upon him at the



spot, and he was informed of his legal right to be searched before a Gazetted Officer or a Magistrate.

22. It is also recorded that the applicant declined the said option and endorsed the carbon copy. Only thereafter was his personal search conducted, from which a white transparent polythene packet tied with a red rubber band containing light-pink powder was recovered from the right pocket of his blue jeans.

23. The powder tested positive on field testing and weighed 269 grams, which is a commercial quantity under the Act. The recovery, seizure and sealing memos bear signatures of the members of the raiding party. The seized material and documents were later handed over to ASI Sanjeev of ANTF/Crime Branch, who was the subsequent Investigating Officer. The chain-of-custody documents on record show continuity in sealing, depositing and forwarding of the exhibits.

24. The contention that the personal search and seizure were invalid because ASI Kirori Mal is not a Gazetted Officer is misplaced. Section 50 of the NDPS Act is attracted to personal search and requires that the accused be informed of his right to demand search before a Gazetted Officer or Magistrate. The requirement is of communicating the choice, not that the search must necessarily be conducted by a Gazetted Officer. Once the accused declines the offer, as is recorded here, the empowered officer may proceed. The law, as settled by the Hon'ble Supreme Court, in a catena of judgments, and also discussed by this Court in *Shahida v. State (NCT of Delhi)*⁶, is that Section 50 of the NDPS Act applies to personal search and when a written notice is served informing the accused of his right to be



searched before a Gazetted Officer or Magistrate, the requirement is substantially fulfilled.

25. Further, Section 42 of the NDPS Act empowers officers, of and above the rank of Sepoy/Peon/Constable, duly authorized by the Government to act under the Act. The record of the case in hand shows that the information was first reduced into writing by ASI Kirori Mal, information was sent to the superior officer (ACP/ARSC, Crime Branch, as per the chargesheet). Thereafter, Inspector Jai Bhagwan directed for laying a trap and made the entry of the secret information on CCTNS. The subsequent search, seizure and arrest were carried out by ASI, as mentioned in the chargesheet explicitly. Thus, the petitioner's contention does not hold any water.

26. The submission regarding absence of independent public witnesses and reliance on Section 100 of the CrPC also does not carry weight at this stage. Section 50(5) expressly contemplates that when production before a Gazetted Officer or Magistrate is not feasible, the officer may proceed with the search in accordance with the CrPC. The documents here show that efforts were made to join public witnesses, but they declined. It is well-settled that non-joining of public witnesses, when justified by circumstances and accompanied by proper recording of reasons, does not *ipso facto* vitiate the seizure at the bail stage. The service of a Section 50 notice, and the accused's refusal to avail the statutory option, are borne out from the record. At this stage, this Court finds no substantive irregularity in the steps preceding seizure which, even *prima facie*, would render the recovery unacceptable for the purposes of considering bail. The Supreme Court



in *State (NCT of Delhi) v. Sunil*⁷, has held that police testimony is not to be discarded merely because no public witness was present, particularly when the recovery is from the personal search of an accused. The place of recovery here is a public area and the prosecution has explained that despite attempts no public person joined the proceedings. Whether such explanation is satisfactory will fall for trial, but for the purpose of Section 37 of the NDPS Act, it cannot be held that the petitioner's assertion creates reasonable grounds to believe that he is not guilty.

27. The next submission concerning delay in drawing of samples and dispatch to the FSL also does not persuade this Court. The record shows that the applicant was apprehended on 21.05.2023, arrested on 22.05.2023, an application under Section 52A of the NDPS Act was moved before the learned Trial Court on 22.05.2023, and the sampling was carried out vide order dated 23.06.2023. The exhibits were sent to FSL Rohini on 28.06.2023. The FSL report dated 19.10.2023 confirms the presence of heroin constituents.

28. The Hon'ble Supreme Court has held that delay in sending the sample does not, by itself, vitiate the prosecution unless the accused demonstrates prejudice or a break in the chain of custody. In *Hardip Singh v. State of Punjab*⁸, the Hon'ble Supreme Court rejected the argument that mere delay in sending samples is fatal in absence of evidence of tampering. In the present case, there is no delay as argued by the petitioner. Further, here, the parcels were sealed, deposited in the malkhana and forwarded under seal, and the FSL report confirms the seals were intact. The applicant has placed no material indicating

⁷(2001) 1 SCC 652

⁸(2008) 8 SCC 557



tampering. Thus, this ground also does not constitute a reasonable basis to conclude that the applicant is not guilty.

29. Mere lapse of time in transmission, absent any indication of tampering or break in the chain, does not by itself create reasonable doubt at the stage of bail. The Hon'ble Supreme Court has repeatedly held that at the bail stage in commercial quantity cases, the Court is primarily concerned with whether the statutory conditions under Section 37(1)(b) of the NDPS Act can be said to be satisfied on the material placed, and not with an exhaustive evaluation of every evidentiary contention. In the present case, the seizure of commercial quantity from the applicant, the compliance of Section 50, the sealed forwarding of samples and the positive FSL report, cumulatively, create a *prima facie* case, not satisfying the rigour of Section 37.

30. The argument that the prosecution case is founded only on disclosure statements and CDR analysis is also contrary to the record. The reliance upon *Tofan Singh (Supra)*, to contend that disclosure statements are inadmissible, is misplaced at this stage. The prosecution case is not founded solely on a disclosure or confession but upon the recovery of a commercial quantity of heroin from the person of the applicant. The admissibility of disclosures and the corroborative value of call detail records are matters for trial. At the stage of bail in a commercial quantity case, the Court does not conduct a mini-trial or weigh the probative value of each circumstance, rather, it only examines whether the material on record enables satisfaction of the twin requirements under Section 37(1)(b)(ii) of the NDPS Act. The recovery from the applicant's possession, supported by the FSL report, stands on an independent footing.



31. Further, the later arrest of co-accused Mehboob and Anwar on disclosure and CDR material does not dilute the direct recovery from the applicant. The co-accused were released on bail on account of nil recovery from them, which distinguishes their position. The petitioner's attribution of innocence, absence of antecedents, family circumstances and prolonged custody are not ignored, but these considerations cannot override the strict statutory bar under Section 37(1)(b) NDPS Act, unless the Court is satisfied that there exist reasonable grounds to believe that the petitioner is not guilty and will not commit any offence while on bail. In a case of recovery of commercial quantity duly corroborated by FSL analysis, these conditions are not met. The trial has commenced and one witness stands examined. On the material presently available, no ground is made out to satisfy the twin requirements under Section 37 so as to grant regular bail.

32. The argument that there is no disclosure of events between 18:30 hours on 21.05.2023 and 01:35 hours on 22.05.2023 when the arrest memo was prepared is likewise a matter of trial. The seizure memo, arrest memo and malkhana entries form a continuous chain and are part of the charge-sheet. These documents will be tested during trial. At this stage, the Court finds no material discrepancy of such magnitude so as to displace the prosecution's case for the purpose of Section 37.

33. The State's submission that the applicant, if released, may hamper the trial cannot be brushed aside at this stage. The principal supplier "Bazid" is yet to be apprehended. These are relevant concerns in assessing the second limb of Section 37(1)(b)(ii).



34. On the question of parity, the co-accused Mehboob and Anwar have been released on regular bail by orders dated 09.02.2024 and 28.03.2024 respectively. However, parity is not automatic nor universal and it operates only when the accused stand in the same footing. Here, there is a material distinction. The co-accused were said to have been arrested at Bisaratanj and no contraband was recovered from them. Their release was *inter alia* on the basis of nil recovery and other features in their cases.

35. By contrast the present petitioner was allegedly intercepted at the scene and a packet of 269 grams heroin was recovered from his person on the spot. The FSL report corroborates the presence of heroin constituents. When the factual role of the accused differs and where a commercial quantity has been recovered from the person of the applicant, parity cannot be claimed as a right. The principle is well-settled, the parity cannot be exercised mechanically where a co-accused's involvement is materially different. The petitioner's reliance upon the co-accused's orders therefore cannot carry the petitioner across the statutory threshold of Section 37 of the NDPS Act.

36. The petitioner's submission that his incarceration since 21.05.2023 is lengthy and violates his right to speedy trial is noted. This Court is mindful of the jurisprudence which emphasises that undue incarceration of under trials is an evil and that delay in trial may justify exceptional exercise of judicial discretion.

37. While the right to speedy trial is a constitutional guarantee, the Hon'ble Supreme Court in *Union of India v. Vigin K. Varghese*⁹, has held that in cases involving commercial quantity, mere long

⁹ (2025) SCC OnLine SC 2440



incarceration cannot by itself dilute the rigours of Section 37. The Court must still be satisfied of the twin conditions.

38. In the present case, however, charges have been framed, the trial has commenced. The prosecution has placed on record the FSL report and the other contemporaneous documents which, when viewed cumulatively, disclose a case in which the statutory embargo of Section 37 of the NDPS Act applies and where the petitioner has not established, on the material before this Court, the twin conditions required for dispensation of the embargo.

39. Considering the commercial nature of the quantity and the fact that the trial is at the stage of evidence where the witnesses are only official witnesses, the ground of delay in trial for bail does not invite any strength as the trial is almost at its end.

40. For the foregoing reasons, namely the undisputed recovery of a commercial quantity of heroin from the petitioner's person (269 grams), the *prima facie* sanctity of seizure and the FSL report, the distinct role of the petitioner vis-à-vis the co-accused, and the absence of decisive proof that procedural irregularity has fatally impaired the prosecution's case, this Court is not satisfied that the twin conditions in Section 37(1)(b)(ii) of the NDPS Act are fulfilled in favour of the petitioner. The statutory bar therefore operates, and this Court does not find any grounds to grant bail to the petitioner.

41. At the same time, since the petitioner remains in judicial custody and the trial is already underway, it is expected that the learned Trial Court shall make an endeavour to expedite the proceedings and conclude the trial as expeditiously as possible, in accordance with law.



42. Nothing stated in this judgment shall be construed as an expression of opinion on the merits of the case, which shall proceed strictly in accordance with law.

43. Accordingly, the present bail application stands dismissed. Pending application(s), if any, stands disposed of.

44. The judgment be uploaded on the website forthwith.

AJAY DIGPAUL, J.

NOVEMBER 20, 2025/ar/ryp