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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 1024/2025 & CRL.M.A. 7716/2025**

RANJEET RAINA

.....Petitioner

Through: Mr. Mohd. Suleman Khan,
Mr. Vinish Mittal and Mr.
Akbar Kaleem, Advocates.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Aashneet Singh, APP
for the State with SI Rohit,
PS ANTF/Crime.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

02.04.2025

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1. This present application is filed seeking grant of regular bail in FIR No. 604/2021 dated 01.12.2021 registered at Police Station Vasant Kunj (South) for offences under Sections 20/25/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, ('NDPS Act').

2. Briefly stated, it is alleged that on the intervening night of 30.11.2021 and 01.12.2021, a secret information was received that one individual was standing outside Farm No. 3, Anand Gram, Ghitorni, New Delhi, in possession of *charas*, intending to sell the same. Acting on this information, a raiding team was constituted, and at around 1:00 AM on 01.12.2021, a vehicle bearing registration number HR78 C 0917 was intercepted while exiting the said farmhouse.

3. It is alleged that the applicant/accused was found seated in the rear seat of the vehicle and was in possession of a cherry-coloured bag containing three packets, later identified as *charas*

BAIL APPLN. 1024/2025

Page 1 of 10



weighing 2047 grams, 3975 grams, and 3555 grams respectively — totalling 9.577 kilograms.

4. The applicant was arrested from the spot along with the co-accused, Gulshan Kumar, who was driving the vehicle.

5. The applicant has been in custody since 01.12.2021, save for the period of interim bail granted on medical grounds.

6. The learned counsel for the applicant submits that the applicant has been falsely implicated in the present case. He submitted that the investigation is complete and the chargesheet has also been filed and no purpose would be served by keeping the applicant in further custody.

7. He submits that the applicant has been diagnosed with Tuberculosis Lymphadenopathy, varicose veins, upper respiratory infection for which he requires continuous medical attention, and he has been granted interim bail by this Court as well due to the same and is still hospitalised.

8. He submits that no endeavour was made by the prosecution to photograph or videotape the recovery either. He submits that the same creates a doubt regarding the credibility of the seizure.

9. He submits that the applicant has deep roots in the society and has clean antecedents. He further submits that the applicant be enlarged on bail on the ground of parity since the other two accused in the present case namely, Gulshan and Sanjay Negi have been enlarged on bail by orders dated 28.11.2022 and 13.07.2022 passed by this Court.

10. He submitted that the applicant was arrested on 01.12.2021 and the charges have been framed in the present case. He submits that there are fifteen witnesses and the trial is likely to take long.

BAIL APPLN. 1024/2025

Page 2 of 10



11. *Per contra*, the learned Additional Public Prosecutor for the respondent vehemently opposed the grant of bail to the applicant and submits that the present case involves recovery of commercial quantity of contraband, and therefore, the rigours of Section 37 of the NDPS Act are attracted against the applicant.

12. He submits that the total recovery in the present case is of commercial quantity, and the complicity of the applicant would be apparent on the consideration of the totality of facts and circumstances.

Analysis

13. 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.

14. 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."*

15. Firstly, the learned counsel for the applicant raised the issue that no independent witness was joined by the prosecution even though the applicant was apprehended on the basis of secret information. It is argued that no independent witnesses were associated by the prosecution and no photography or videography was done by the prosecution in the present case despite the applicant being apprehended in a public place.

16. Undoubtedly, 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 would thus not be fatal to the prosecution's case. 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.

17. However, it cannot be denied that the lack of independent witnesses in some circumstances casts a shadow over the case of the prosecution.

18. 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.

19. It is contended by the prosecution that the raid was conducted later at night and being a dark and deserted place, no public witness was found.

20. It is peculiar that no notice under Section 100(8) of the CrPC was given to any person after the information was received and, on the refusal, to support the Investigating Agency during the search procedure.

21. This Court in *Bantu v. State Govt of NCT of Delhi (supra)*, noted that the Hon'ble Apex Court, way back in the year 2018 in *Shafhi Mohd. v. State of H.P. : (2018) 5 SCC 311*, after taking note of the technological advancements, had passed certain directions. The Hon'ble Apex Court had emphasized the role of audio-visual technology in enhancing the efficacy and transparency in the Police investigations.

22. This Court also noted that the procedure prescribed in NCB Handbook which has been adopted by the Delhi Police may be argued to be not binding, however, it cannot be denied that the same has been prescribed as the best and crucial practice for obtaining evidence in order to avoid the allegation in regard to foul play.

23. Hence, since no effort to photograph or videotape the recovery has been made by the prosecution in the present case to



endorse the credibility of the recovery, the benefit, at this stage, cannot be denied to the accused.

24. Secondly, the learned counsel submits that the applicant is suffering from Tuberculosis Lymphadenopathy, varicose veins, upper respiratory infection and he has been granted interim bail by the learned Trial Court due to the same.

25. It is undisputed that the applicant did not misuse the liberty granted to him on earlier occasion and is hospitalized at the moment.

26. In the case of *Salim Valimamad Majothi v. State of Gujarat* : 2023 SCC OnLine SC 659, the Hon'ble Apex Court granted bail to an accused involved in a case under the NDPS Act by considering his medical condition as well as the fact that he had been in incarceration for more than 1 year and 7 months.

27. Delay in trial and long period of incarceration is also an important factor which has to be kept in mind while considering the application for bail.

28. In the present case, the matter is at the stage of prosecution evidence. It is stated that only one witness has been examined out of fifteen witnesses. The applicant has been in custody since 01.12.2021. There is no likelihood of the trial being completed in the near future.

29. 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)

30. The Hon’ble Apex Court in the case of ***Man Mandal & Anr. v. The State of West Bengal : SLP(CRL.) No. 8656/2023*** had granted bail to the petitioner therein, in an FIR for offences under the NDPS Act, on the ground that the accused had been



incarcerated for a period of almost two years and the trial was likely going to take considerable amount of time.

31. 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)

32. 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. delay in the completion of the trial. 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.

33. In view of the aforesaid, this Court is of the opinion that the applicant has made out a *prima facie* case for grant of bail on the ground of absence of independent witnesses, no photography or videography of the recovery, his medical condition coupled with prolonged delay in trial.

34. The applicant is also stated to be of clean antecedents, and is thus not likely to commit any offence whilst on bail.



35. The applicant is, therefore, directed to be released on bail on furnishing a personal bond for a sum of ₹50,000/- 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 boundaries of 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, after his release, appear before the concerned IO once in every week;
- e. The applicant shall provide the address where he would be residing after his release to the concerned IO/SHO and shall not change the address without informing the concerned IO;
- f. The applicant shall, upon his release, give his mobile number to the concerned IO and shall keep her mobile phone switched on at all times.

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

37. 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.

38. The bail application is allowed in the aforementioned terms.

39. All pending applications stand disposed of.

AMIT MAHAJAN, J

APRIL 2, 2025