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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 1092/2025**
MEENA @ MINIAPetitioner

Through: Mr. Kundan Kumar, Advocate.

versus

STATE (N CT OF DELHI)Respondent

Through: Mr. Amit Ahlawat, APP.
SI Yogesh Kumar, P.S. Gulabi Bagh
and SI Ramesh, P.S. Kotwali.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

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29.04.2025

1. The present application filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹ (formerly Section 439 of the Code of Criminal Procedure, 1973²) seeks regular bail in proceedings arising from FIR No. 150/2024 registered under Section 21 of Narcotic Drugs and Psychotropic Substances Act, 1985³ at P.S. Gulabi Bagh. Subsequently, a chargesheet was filed under Section 21 of the NDPS Act.

Prosecution's Case

2. Briefly, the case of the prosecution is summarised as follows:

2.1. On 13th June, 2024, at approximately 12:10 PM, specific intelligence was received regarding a woman named Minia, who was allegedly involved in the sale of heroin. It was reported that she would be travelling from the

¹ "BNSS"

² Cr.P.C.

³ "NDPS Act"



jhuggi cluster near Peer Bagichi, adjacent to the Subzi Mandi railway line, carrying a consignment of heroin.

2.2 Acting on this information, a raiding party reached the identified location around 12:35 PM. SI Nishant, in an effort to comply with procedural safeguards, attempted to secure independent public witnesses by approaching several passersby. However, despite multiple attempts, none agreed to join the proceedings.

2.3 At approximately 1:02 PM, a woman wearing pink clothes and carrying a black plastic bag was spotted at Peer Ji Baghi slums. Upon being identified by the informant, she was intercepted by the raiding team. Upon inquiry, she disclosed her identity as Meena @ Minia, the present Applicant.

2.4 A personal search of the Applicant was conducted in compliance with Section 50 of the NDPS Act. Although no contraband was recovered from her person, upon inspection of the black polythene bag she was carrying, a transparent pouch containing reddish-pink powder was found. Field testing using a Narcotic Drug Detection Kit yielded a positive result for heroin. The contents were weighed using an electronic scale and found to be approximately 260 grams. The contraband was duly seized, sealed, and marked in accordance with law, following which the present FIR came to be registered and the Applicant was arrested.

2.5. During investigation, the Applicant allegedly disclosed that one “Nitesh” from the Pratap Nagar area was her supplier and that he would deliver heroin at different locations near railway lines. However, the Applicant was unable to provide any specific address or contact number, and despite several follow-up efforts, the said individual could not be traced.

2.6. On 20th June, 2024, proceedings were conducted under Section 52A of



the NDPS Act, to draw samples from the seized contraband, before the Metropolitan Magistrate, Central, Tis Hazari Courts. The contraband was weighed and photographed in the presence of the Magistrate. As recorded in the order, the bowl used for weighing measured 110 grams. After resetting the weighing machine, the contraband was placed in the bowl and showed a net weight of 258 grams. Two samples of 5 grams each were drawn, sealed, and marked as Samples A1 and A2. The remainder, weighing 248 grams, was separately stored and sealed. The order reads as follows:

“..the weighing scale is set at zero and photographs of the same were taken. To weigh the contraband accurately, one empty bowl was placed on the weighing machine and weighing machine showed the weight as 110 gm. The weighing machine with the bowl was reset to zero and the contraband was put in the bowl and the weighing machine reflected the weight as 258 gms.”

“..Two samples of 5 gm each has been taken as per the weight shown in the weighing machine. The photographs have been duly taken. The samples are kept in separate plastic container with Mark A1 and A2. The remaining contraband has been weighed again and which showed the weight as 248 gms. The remaining contraband is kept in separate plastic container”.

2.7. The samples were subsequently sent for forensic analysis. The FSL report confirmed that the seized substance tested positive for Diacetylmorphine (heroin), along with other pharmaceutical and narcotic compounds including Acetaminophen, Tramadol, Codeine, Morphine, Acetylcodeine, Monoacetylmorphine, Trimethoprim, Papaverine, and Alprazolam. These findings were filed by the Investigating Officer along with the supplementary chargesheet.

Applicant's Case

3. Counsel for the Applicant submits the following grounds for grant of bail:

3.1. The contraband allegedly recovered does not meet the threshold of



“commercial quantity” under the NDPS Act. Although the Prosecution claims a total recovery of 258 grams of heroin, a closer examination of the weighing procedure recorded in the order dated 20th June, 2024 reveals otherwise. The weighing process involved placing the contraband in a bowl which in itself weighed 110 grams. The total weight of 258 grams therefore included the weight of the bowl. Deducting this from the total yields an actual net weight of only 148 grams, which falls within the ‘intermediate quantity’ category. Accordingly, it is argued that the rigours of Section 37 of the NDPS Act, which is applicable only in cases involving commercial quantity, are not attracted.

3.2. The photographs relied upon by the Prosecution fail to establish that the weighing scale was properly calibrated. In particular, there is no photograph showing the weighing machine reflecting a ‘zero’ reading after the bowl was placed on it. In the absence of such evidence, the Prosecution’s assertion that the machine automatically tared the weight of the bowl and measured only the net weight of the contraband cannot be accepted at face value. The failure to adhere to prescribed safeguards, it is argued, vitiates the sanctity of the sampling procedure and undermines the evidentiary value of the weight determination.

3.3. The photographs of the weighing of sample process consistently show a reading of 115 grams, comprising 110 grams for the bowl and 5 grams for the sample. If the weighing scale had truly reset to zero after the bowl was placed, the reading ought to have reflected 5 grams, not 115 grams. This, it is submitted, further supports the inference that the scale recorded the gross weight, including the bowl. Accordingly, the total quantity of contraband recovered was only 148 grams, not 258 grams as alleged.



3.4. Another concern raised relates to the acknowledgment issued by the Forensic Science Laboratory (FSL) dated 1st July, 2024, which mistakenly cites FIR No. 0023/2020 dated 19th February, 2020 of P.S. Gulabi Bagh—an FIR unrelated to the present case. It is submitted that this discrepancy raises a serious question as to the chain of custody and creates doubt about the identity and integrity of the samples submitted for analysis. Such an error, it is argued, casts a shadow over the credibility of the prosecution's case and suggests the possibility of tampering or procedural lapses.

3.5. The investigation in the matter is complete and the chargesheet has been filed. The Applicant has remained in custody throughout the investigation. In the absence of any further requirement for custodial interrogation, continued incarceration of the Applicant serves no useful purpose and amounts to pre-trial punishment.

Prosecution's Case

4. Mr. Amit Ahlawat, APP for the State, opposes the present application and advances the following submissions:

4.1. The contraband allegedly recovered from the Applicant [258 grams of heroin] squarely falls within the definition of “commercial quantity” under the NDPS Act. Consequently, the statutory bar under Section 37 is attracted, and the Applicant is required to meet the twin conditions stipulated therein before any relief can be considered.

4.2. In response to the Applicant's contention regarding improper weighment, Mr. Ahlawat refers to the judicial proceedings dated 20th June, 2024, which clearly record that the weighing scale, after registering the weight of the empty bowl (110 grams), was reset to zero prior to weighing the seized material. This indicates that the “tare” function was correctly used, thereby



excluding the weight of the bowl. The resultant measurement of 258 grams reflected the net weight of the narcotic substance alone. Thus, the claim that only 148 grams of heroin was recovered is factually misconceived and unsupported by the record.

4.3. As regards the discrepancy in the FSL's acknowledgment receipt, the Prosecution submits that the reference to an incorrect FIR number was a clerical oversight. The error has been duly rectified, and the corrected acknowledgment now accurately reflects the particulars of the present case. The integrity of the chain of custody, it is asserted, remains intact and unimpeached.

4.4. It is also pertinent to note that the Applicant is not a first-time offender and has past antecedents. This pattern of behaviour presents a real and tangible risk of recidivism were the Applicant to be released on bail.

4.5. Further, the proceedings in the present case are progressing in accordance with law and are likely to reach conclusion in the foreseeable future. In these circumstances, the argument of prolonged incarceration raised by the Applicant holds little merit.

ANALYSIS

5. The Court has considered the facts of the case and the contentions advanced by the parties.

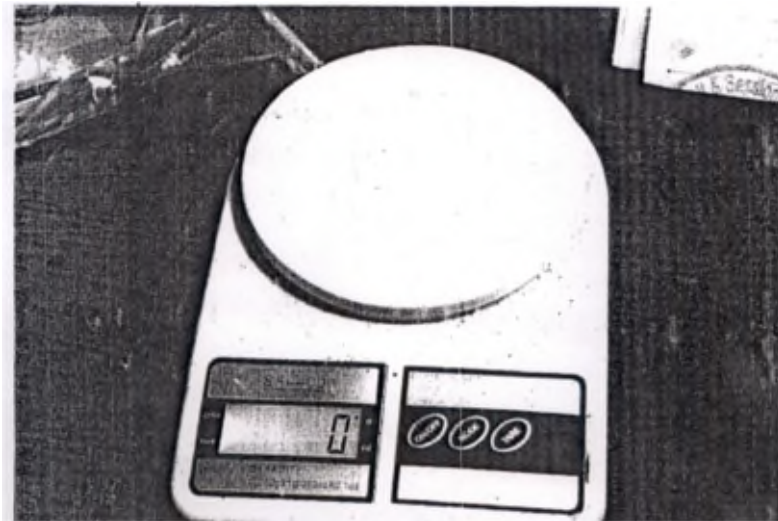
6. Upon a *prima facie* assessment of the record, this Court finds merit in the Applicant's contention that the Prosecution has not established that the quantity of contraband recovered qualifies as a "commercial quantity." This question lies at the heart of the present application, as the applicability of Section 37 of the NDPS Act hinges on whether the recovered substance exceeds the threshold of 250 grams for heroin.



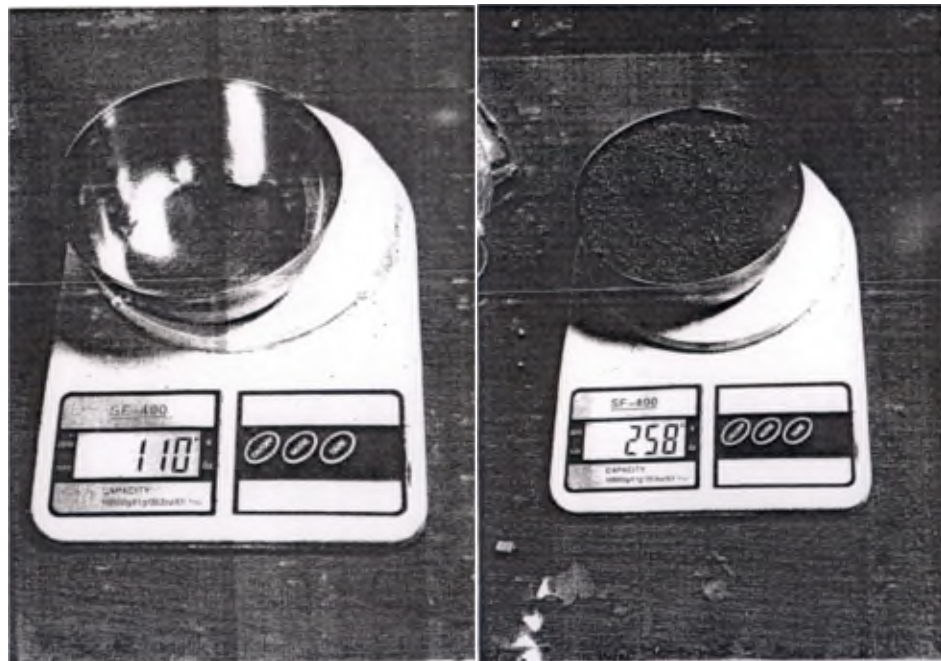
7. As per the proceedings dated 20th June, 2024, the weighing scale was purportedly “reset to zero” after placing a 110g empty bowl. However, the photographs placed on record do not capture any image reflecting a zeroed reading after placing the empty bowl. In the absence of such contemporaneous photographic evidence, it becomes difficult to accept, at this stage, the assertion that the scale excluded the bowl’s weight. This casts a reasonable doubt as to whether the reported weight of 258g truly represented only the net weight of the contraband.

8. The Applicant has further drawn the Court’s attention to two photographs wherein the scale reflects a weight of 115g while measuring a 5g sample of the contraband using the same 110g bowl. If indeed the scale had accounted for the bowl through the tare function, the reading should have reflected 5g. This consistent 115g reading *prima facie* suggests that the scale did not deduct the bowl’s weight. In such circumstances, a reasonable view emerges that the actual weight of the contraband was 148g (i.e., 258g – 110g), which would place the recovery within the bounds of “intermediate quantity,” not “commercial quantity.” For reference the said photographs are reproduced herein below:

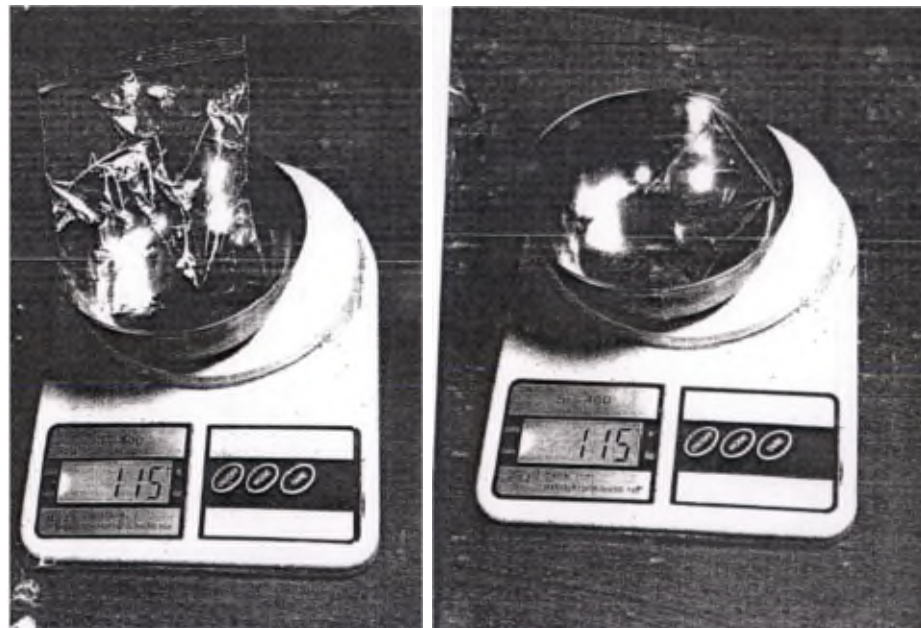
The photographs of the weighing machine set at zero is as follows:



The photographs of the weighing machine with the empty bowl and the bowl with contraband is as follows:



The photographs of the weighing machine with samples drawn is as follows:



9. Additionally, the marginal proximity of the recovered quantity to the statutory threshold of 250g reinforces the need for caution. There must be a strict adherence to procedural safeguards is imperative, particularly where the recovery hovers close to the border between intermediate and commercial quantity.

10. Furthermore, the absence of independent witnesses during the search and seizure operation, despite the raid occurring in a public location, is another factor that weighs against the Prosecution at this stage. The explanation that passersby were “in a hurry” and left without sharing their identities appears insufficient, especially in a well-frequented area such as Peer Bagichi Jhuggies near the railway line. This omission detracts from the transparency of the search process and casts doubt on the procedural regularity of the seizure. In *Bantu v. State Government of NCT of Delhi*⁴, this Court has observed that the absence of independent witnesses, especially

⁴ 2024 SCC OnLine Del 4671



in crowded public places, undermines the transparency of the seizure procedure and weakens the evidentiary value of the primary evidence in NDPS cases. In the present case, the failure to include independent witnesses, despite the raid occurring in a public location, indicates a procedural irregularity in the search process. While such procedural omissions may not outrightly invalidate the Prosecution's case, they significantly undermine the transparency and credibility of the search and seizure process. This is particularly relevant at the stage of grant of bail, as it is essential to ensure that the rights of the accused are not unjustly curtailed.

11. Based on the foregoing and upon a *prima facie* assessment, this Court is of the view that the quantity recovered does not constitute a "commercial quantity," and therefore, the stringent provisions of Section 37 of the NDPS Act are not applicable. Accordingly, the court must now consider whether the Applicant is otherwise entitled to bail as per the general considerations for bail under Section 483 of the BNSS (formerly Section 439 CrPC).

12. It is a settled proposition of law that the purpose of bail is not punitive, but to ensure the presence of the accused at trial. As repeatedly underscored by the Supreme Court, pre-trial detention should not extend beyond what is necessary to safeguard the integrity of the proceedings. As per the nominal roll, as on 21st April 2025, the Applicant has already undergone incarceration for over 8 months. In the present case, the investigation is complete, the chargesheet stands filed, and no request for further custodial interrogation has been made. In these circumstances, the continued detention of the Applicant serves no purpose.

13. As regards the Applicant's antecedents, it is relevant to note that the



Supreme Court in *Prabhakar Tiwari vs. State of Uttar Pradesh*⁵ has observed that while the existence of criminal cases is a relevant factor for consideration, it cannot, in itself, form the sole basis for the denial of bail. Thus, mere pendency of cases does not automatically disentitle an accused from being granted bail, particularly when there is no independent material indicating that he poses a threat to the investigation or is likely to tamper with evidence. Considering that the Applicant has been in custody for over 8 months and in the absence of any compelling reason to prolong his detention, the Court is inclined to enlarge the Applicant on bail.

14. The Applicant is, therefore, directed to be released on bail on furnishing a personal bond for a sum of ₹25,000/- with two sureties of the like amount, subject to the satisfaction of the Trial Court/Duty MM, on the following conditions:

- a. The Applicant shall cooperate in any further investigation as and when directed by the concerned IO;
- b. 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;
- c. The Applicant shall under no circumstance leave the country without the permission of the Trial Court;
- d. The Applicant shall appear before the Trial Court as and when directed;
- e. The Applicant shall provide the address where she would be residing after her release and shall not change the address without informing the concerned IO/ SHO;

⁵ AIR Online 2020 SC 96



- f. The Applicant shall, upon her release, give her mobile number to the concerned IO/SHO and shall keep her mobile phone switched on at all times.
- g. The Applicant shall report to the concerned PS on first Friday of every month;
15. In the event of there being any FIR/DD entry / complaint lodged against the Applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.
16. 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.
17. A copy of the order be sent to the Jail Superintendent for information and necessary compliance.
18. The bail application is disposed of in the aforesaid terms.

SANJEEV NARULA, J

APRIL 29, 2025/as