



\$~SB-1

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

+ **BAIL APPLN. 1156/2025**

MITHUN SHAW

.....Petitioner

Through: Ms. Shivani Sharma, Advocate
through VC.

versus

STATE GOVT. OF NCT OF DELHI

.....Respondent

Through: Mr. Laksh Khanna, APP for the
State with SI Vikas, ISC/Crime.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER

%

04.06.2025

1. The present application has been filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to 'BNSS') seeking regular bail in proceeding arising out of FIR No.293/2022, under Section 20/25/29 of NDPS Act registered at P.S. Crime Branch, Delhi.

2. Briefly stated, the case of the Prosecution is as follows:

2.1. On 20th December, 2022, a secret informer provided information to SI Naresh Kumar at the Inter State Cell. Crime Branch, Chanakyapuri, Delhi, stating that a person named Allalu Din @ Noor, involved in the smuggling of Cannabis (*Ganja*) would be coming to Dwarka in a taxi to supply the contraband. The information was conveyed to senior officers, and a raiding team was formed accordingly.

2.2 The raiding party, accompanied by the secret informer, reached the location, where the informer identified the suspect, who was loading plastic bags into his car. The suspect was apprehended along with the four plastic bags and the taxi, and was identified as Allalu Din @ Noor.

BAIL APPLN. 1156/2025

Page 1 of 7



2.3 A search of the suspect and the four suspected plastic bags, along with taxi was conducted, resulting in the recovery of around 100 kg of Cannabis (Ganja) from the four plastic bags recovered from the possession of Allalu Din @ Noor. As a result, the impugned FIR was registered against Allalu Din @ Noor, who was arrested, and his police custody remand was obtained.

2.4 On 23rd December, 2022, one Sunil @ Sunny Mama was arrested at the instance of Allalu Din @ Noor, and was identified as a receiver of the contraband. 5 kg of Ganja was recovered from his house.

2.5 Subsequently, on 31st December, 2022, one Laxman Bachhar @ Lakhan @ Sagar was arrested at the instance of Allalu Din @ Noor. A recovery of 27 kg of Ganja was made from his house. The said Laxman Bachhar is stated to be previously involved in 17 cases and is a known BC (Bad Character) of the Shakarpur area. He was connected to Allalu Din @ Noor through CDR and bank transactions.

2.6 On the same day, the applicant Mithun Shaw was also arrested with a recovery of 21 kg of Ganja. It is alleged that the applicant had travelled to Delhi from Murshidabad to deliver 20 kg Ganja to Laxman Bachhar.

2.7 Laxman Bachhar is stated to be the main supplier of Ganja, well-connected with sources in remote areas of West Bengal, Andhra Pradesh, and Odisha. He procures illegal Ganja from rural areas and transports it to Delhi with the help of carriers through public transport.

2.8 Upon the disclosure of Laxman Bachhar, the applicant was arrested and has been in custody since 31.12.2022.

2.9 It has been informed that the Trial Court has framed charges against the accused persons including the applicant on 01.04.2025..

3. Ms. Shivani Sharma, learned counsel appearing for the applicant



submits that the applicant is alleged to have been in possession of 21 kgs of Ganja, which was seized from the applicant at the residence of one Laxman Bachhar, who is one of the co-accused persons, from whom 27 kgs of Ganja was allegedly seized on the same day. The co-accused person, Laxman Bachhar has already been enlarged on bail *vide* order of this Court dated 21.02.2025. She submits that there are about 23 witnesses in all who are to be examined. She submits that though the charges have been framed on 01.04.2025, but the examination of all the 23 witnesses will take a long time to conclude. She submits that the delay in trial is bound to happen on account of the aforesaid number of witnesses.

4. Learned counsel for the applicant also submits that the applicant has been in incarceration for a period of 2 years 4 months and 25 days as on 24.05.2025 according to the nominal roll and has not been released on bail till date. She submits that almost all of the co-accused persons have already been enlarged on bail including Laxman Bachhar who was released on bail *vide* the order dated 21.02.2025. She submits that since the charge-sheet has been filed and the charges have already been framed by the learned Trial Court, no purpose would be served in continuing the incarceration of the applicant.

5. She submits that so far as the rigors of Section 37(1)(b)(i) are concerned, the opportunity of opposing the bail application has already been granted to the Prosecution. So far as the rigors of sub-clause (ii) of Clause (b) of Sub Section (1) of Section 37 is concerned, she submits that the applicant is a first time offender and question of any apprehension on release on the ground believing that he is guilty of such an offence or that he is likely to commit an offence during bail, is very unlikely and therefore, the rigors of Section 37 would not come in the way of the applicant being



enlarged on bail. Additionally, she relied upon the judgment of the Supreme Court in ***Bishwajit Mondal @ Biswajit Mandal vs. The State of West Bengal***, SLP (Crl.) No.11731/2022 and ***Mohd. Muslim Abas Hussain vs. State (NCT of Delhi)***, (2023) 18 SCC 166, to submit that in similar circumstances, the accused persons have been enlarged on bail, by the Apex Court.

6. She also submits that no independent witnesses were sought by the Prosecution at the time of seizure, nor was any videography carried out thereby violating the provisions of NDPS Act.

7. Opposing the bail application, Mr. Khanna, learned APP for the State submits that the applicant was, in fact, arrested on 31.12.2022 and a quantity of 21 kgs of Ganja was seized from him in accordance with the provisions of NDPS Act. He submits that the said quantity is a commercial quantity and the rigors of Section 37 of NDPS will squarely be applicable to the facts of the case. He contends that the applicant had travelled to Delhi from Murshidabad to deliver 20 kgs. of Ganja to Laxman Bachhar. In other words, learned counsel for the applicant submits that the applicant is a carrier since he had sourced the Ganja from Orissa to Delhi.

8. That apart, learned APP also submits that the CDR record and bank transactions of the co-accused Laxman Bachhar indicates that Laxman was in touch with his primary supplier in Andhra Pradesh, West Bengal and Orissa, for which purposes the applicant herein was being used as carrier. He submits that keeping in view the aforesaid serious offences against the applicant, he may not be released on regular bail, particularly on the ground of parity, and the bail application be dismissed.

9. The record reveals there are about 23 witnesses to be examined which is likely to take time apart from the fact that the applicant has



already been incarcerated for a period of 2 years, 4 months and 25 days as on 24.05.2025, according to the nominal roll.

10. That apart, *vide* the order dated 21.02.2025, the co-accused person, from whose residence the applicant has been allegedly arrested and the Ganja to the extent of 21 kgs have been seized, has already been enlarged on bail by the said order. So far as the rigors of Section 37 of the Act are concerned, sub clause (i) of Clause (b) of sub-section 1 of Section 37 already stands complied with and so far as the rigors of sub clause (ii) of Clause (b) of sub-section (1) of Section 37 is concerned, the judgment of Supreme Court in ***Rabi Prakash vs. State of Odisha, 2023 SCC OnLine SC 1109***, clearly enumerated the law in para 4 of the said judgment, which is extracted hereunder:

“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.”

11. A perusal of the observation of the Supreme Court fairly indicates that when it comes to the Constitutional rights guaranteed under Article 21 of the Constitution of India i.e. prolonged incarceration is concerned, the conditional liberty must override the statutory embargo created under Section 37 (1)(b) (ii) of the NDPS Act. That apart, right to life and personal liberty cannot be undermined by unwarranted delay in judicial process, particularly when such delay is not attributable to the accused/applicant nor



justified by the Prosecution.

12. In that view of the matter and also taking into consideration the fact that all the co-accused persons have already been enlarged on bail barring one Md. Nurul Ialam @ Md. Alluaddin who was granted interim bail and jumped the liberty and appropriate proceedings are stated to have been initiated against him, this Court is of the opinion that the applicant has satisfied the statutory condition for grant of bail.

13. The applicant is therefore, directed to be released on bail on furnishing a personal bond of Rs.50,000/- with one surety of the like amount subject to the satisfaction of the Trial Court on the following conditions:

- a. The Applicant shall not indulge in any criminal activity. He 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 cooperate in further investigation, as and when directed by the concerned IO;
- c. The Applicant shall under no circumstances leave the country without the permission of the Trial Court;
- d. The Applicant shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/SHO;
- e. The Applicant shall appear before the Trial Court as and when directed;
- f. The Applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times;



g. 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.

h. Since the applicant is ordinarily a resident of West Bengal, the applicant is directed to report to the concerned P.S. Azeemganj, West Bengal on every 1st and 15th day of the month.

14. Needless to state that any observation made above are only for the purposes of granting bail and shall not tantamount to an expression on merits of the matter.

15. A copy of this order be sent to the Jail Superintendent for information and necessary compliance.

16. A copy of this order be given *dasti* under the signature of Court Master.

17. The bail application is disposed of in the aforesaid terms.

TUSHAR RAO GEDELA, J
(VACATION JUDGE)

JUNE 4, 2025

kct