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

+ **BAIL APPLN. 1177/2025**

JYOTI

.....Applicant

Through: Mr. Amit Chadha, Senior
Advocate with Mr. Sanjog
Singh, Mr. Furkan, Mr.
Harjas Singh, Mr. Dhruv
Tomar and Mr. Kartik
Shokeen, Advs.

versus

STATE NCT OF DELHI

.....Respondent

Through: Ms. Richa Dhawan, APP
for the State with SI
Amrendra, ANTF, Crime
Branch.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **06.08.2025**

1. The present application is filed seeking regular bail in FIR No. 222/2023 dated 20.09.2023, registered at Police Station Crime Branch, for offences under Sections 21/25/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act').
2. The brief facts of the case are that on 20.09.2023, a secret information was received that the applicant and her son would be coming to supply contraband near GTB Hospital. It is alleged that on the arrival of the applicant and her son, they were identified by the informer, pursuant to which the applicant and her son were surrounded and apprehended. On their search, the applicant was found to be carrying 480 grams of heroin.

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3. The learned counsel for the applicant submits that the applicant has been falsely implicated in the present case. He submits that despite the alleged apprehension of the applicant at a public place, no independent eye-witness has been made to join the investigation.

4. He submits that the grounds of arrest were also not supplied to the applicant, which renders the arrest of the applicant illegal in light of the judgment passed by the Hon'ble Apex Court in the case of ***Prabir Purkayastha v. State (NCT of Delhi) : (2024) 8 SCC 254***.

5. He submits that the applicant has spent about 18 months in custody and no witness has been examined till now. He lastly contends that the applicant has been suffering from a rare cancer and requires regular treatment. He submits that the applicant has to take care of 2 minor children.

6. *Per contra*, the learned Additional Public Prosecutor for the State submits that the applicant is involved in multiple cases and four of them are registered for the offences under the NDPS Act. She submits that the applicant is a habitual offender and ought not to be granted any benefit of bail.

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

8. 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. However, at the same time, the period of incarceration is also a relevant factor that is to be considered.

9. 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.”

10. Much emphasis has been laid by the counsel of the applicant on the fact that the applicant is suffering from blood cancer. The medical condition of the applicant is not disputed. The learned Additional Public Prosecutor for the State has however contended that the applicant cannot be granted bail merely on account of her medical condition. It has been emphasised that the applicant is also embroiled in as many as four cases for the offences under the NDPS Act.



11. It is relevant to note that this Court had previously granted interim bail to the applicant by considering that the applicant was suffering from a terminal ailment.

12. While there is no dispute that bail cannot be granted to the applicant on the sole ground of the gravity of the ailment in ignorance of the rigours of Section 37 of the NDPS Act, however, this Court cannot lose sight of the fact that the present case is one where the applicant was arrested on 20.09.2023, despite which, none of the twenty-eight listed prosecution witnesses have been examined till now. In such circumstances, speedy trial does not seem to be a possibility.

13. 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.

14. Furthermore, it is argued that no independent witness was joined by the prosecution even though the applicant was apprehended at a public place on the basis of secret information. Furthermore, it is argued that no photography or videography was done by the prosecution in the present case.

15. 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 or absence of photography and videography of the recovery. The same would 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.

16. However, it cannot be denied that the lack of independent witnesses and photography or videography, in some circumstances, casts a shadow over the case of the prosecution.

17. 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.

18. It is stated in the FIR that although 4-5 persons were asked to join investigation, however, they refused to join the same. While the veracity of the explanation of 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 considering the medical condition of the applicant as well as the fact that the trial is likely going to take a long time to conclude.

19. Insofar as the antecedents of the applicant are concerned, the nominal roll mentions that she is already on bail in all the



other cases. It is also important to note that the applicant has been acquitted and discharged of the offences under Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 as well.

20. It is also pointed out that the applicant has minor children to take care of.

21. In such circumstances, this Court considers it apposite to grant bail to the applicant on the ground of her medical condition coupled with the absence of independent witnesses as well as delay in trial.

22. The learned counsel for the applicant has also urged that the grounds of arrest were not served to the applicant at the time of arrest. While it is settled law that every accused has a fundamental and statutory right to be informed about the grounds of arrest in writing at the earliest, however, considering that the applicant has even otherwise made out a case for grant of bail, this Court does not consider it apposite to venture into the issue as to the legality of arrest.

23. The applicant is, therefore, directed to be released on bail on furnishing a personal bond for a sum of ₹1,00,000/- 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 provide the address where she would be residing after her release to the concerned IO/SHO and shall not change the address without informing the concerned IO;
- e. The applicant shall, upon her release, give her mobile number to the concerned IO and shall keep her mobile phone switched on at all times.

24. 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.

25. 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.

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

AMIT MAHAJAN, J

AUGUST 6, 2025

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