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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 1214/2025**

NARESH KUMAR GUPTA

.....Petitioner

Through: Mr. Bramhansh Bhardwaj and Mr.
Archit Kaushik, Advocates

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Ms. Richa Dhawan, APP for State
with SI Pinki Rani

CORAM:

HON'BLE MR. JUSTICE ARUN MONGA

ORDER

% **19.09.2025**

1. The applicant herein seeks indulgence of this Court for grant of regular bail during pendency of the trial in the criminal proceedings arising out of FIR No. 117/2023 dated 17.05.2023 for the offences punishable under Sections 15/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act), registered at Police Station Crime Branch, Delhi.
2. Applicant is under incarceration since 17.05.2023 (2 year and 4 months) and his last bail application was dismissed by learned ASJ/ Special Judge on 23.01.2025.
3. Briefly stated, as per the FIR, on 17.05.2022, information was received from a security guard regarding co-accused/ Neeraj, who, along with another co-accused/ Dilip Kumar Mishra and the applicant, was allegedly engaged in procuring large quantities of Doda poppy straw from Lal Soth, Rajasthan. They were supplying the same, both wholesale and retail, in Delhi and Ghaziabad, using a white Swift Dzire car belonging to a



relative of co-accused/ Neeraj.

3.1 Acting upon the said information, the police noticed co-accused/ Dilip and the applicant near Bhalswa Lake in the aforesaid Swift Dzire, awaiting the arrival of co-accused Neeraj. Thereafter, a raid was accordingly organized, and vehicles were strategically positioned to intercept the suspects. Both co-accused/ Dilip and the applicant were apprehended, duly identified, and informed of their legal rights under Section 50 of the NDPS Act. The applicant voluntarily waived his rights along with the co-accused Dilip.

3.2 Upon their personal search, no contraband was recovered from either of them. Thereafter, the Swift Dzire was searched, which resulted in the recovery of three white bags containing greenish-brown Doda poppy straw. Each bag was weighed separately, and the total quantity was found to be 55 kg. Consequently, the present FIR was registered, and investigation ensued.

4. In view of the aforesaid, I have heard the rival contentions and perused the case file.

5. Learned counsel for the applicant would inter alia argue on the lines of grounds pleaded in the petition as below:

5.1 That the prosecution case is vitiated due to non-compliance of mandatory provisions of Sections 41 and 42 NDPS Act. No written authorization, warrant, or proper recording of secret information has been produced, which renders the alleged recovery illegal as per the settled law of the Hon'ble Supreme Court.

5.2 That the alleged recovery took place at a busy public location, yet no independent witness was joined. This omission casts serious doubt on the fairness and transparency of the investigation. The absence of videography or



photography of the recovery proceedings, especially when no independent witness was available, weakens the prosecution version and makes the alleged recovery unreliable.

5.3 That there are also material discrepancies in the weight of the samples recorded at the time of seizure and those received at the FSL, which indicates tampering and breaks the chain of custody. Such irregularities strike at the root of the prosecution case.

5.4 That the prosecution has deliberately withheld crucial evidence, such as the location data of the date of incident i.e. 17.05.2023, while selectively producing the data of the previous day only. This suppression of material evidence shows *mala fide* on the part of the investigating agency.

5.5 That the Applicant has unblemished antecedents, with no previous involvement in any criminal case under the NDPS Act. His record demonstrates that he has been a law-abiding citizen and there is no material to suggest any likelihood of reoffending.

5.6 That the applicant has no ownership, possession, or connection with the vehicle from which the alleged contraband was recovered. His implication is thus doubtful and he deserves to be released on bail.

5.7 That the Applicant is willing to furnish sound sureties and provide a permanent Delhi address during trial. He submits that his prolonged incarceration as an under-trial is causing severe hardship, including loss of livelihood, strain on family life, and risk of “prisonisation,” especially given his modest background and the delay in trial.

6. Learned APP for the State would oppose the bail plea arguing that the present case squarely attracts the rigours of Section 37 NDPS Act, and the Applicant has failed to satisfy the mandatory twin conditions for bail. The



offence involves recovery of a commercial quantity of contraband, which is a grave crime with serious social consequences.

6.1 She would further submit that a total of 55 kgs of Doda Post (Poppy Straw) was recovered from the applicant and his co-accused Dilip Kumar Mishra from Swift Dzire.

6.2 That location of the applicant was traced to Deoli, Tonk, Rajasthan, from where he, along with co-accused/ Dilip Kumar Mishra, had procured the Doda Post from source Shanker Lal Dhakar, which was subsequently recovered from their possession in the said vehicle. She would thus submit that the instant application of the applicant deserves to be dismissed.

6.3 She would further submit that there is a strong likelihood that if released, the Applicant may re-offend or tamper with evidence. In NDPS matters, the presumption is against bail, and the gravity of the offence itself is a sufficient ground to decline relief. Hence, the bail application deserves dismissal.

7. Having heard, *prima facie*, I find that certain submissions made on merits by the learned counsel for the applicant do carry some weight, though these are ultimately issues to be adjudicated at trial. Nonetheless, having regard to the overall circumstances, I am of the considered view that this is a case for grant of bail at this stage. Let us see how.

8. The applicant, in custody since 17.05.2023, is also entitled to parity with co-accused Neeraj who has already been granted bail. His custodial interrogation is over, the investigation is complete, and the charge sheet filed. Twin conditions under Section 37 NDPS Act have to read in light of constitutional safeguards and the delay in trial can itself be a ground for bail under Section 436A CrPC.



9. The applicant has already remained in custody for more than 2 years and 4 months. The trial is moving at a snail's pace and further continued incarceration would cause undue hardship to applicant's family and serve no useful purpose, especially when the trial is not likely to conclude in the near future as it violates the fundamental rule i.e. bail is the rule and jail an exception.

10. Non-compliance with Sections 41 and 42 of the NDPS Act, as no written authorization, warrant, or proper recording of secret information has been produced, casts a shadow on the prosecution case. The alleged recovery at a busy public place without videography or photography. Same may not be sine qua non, but it undermines the fairness and reliability of the proceedings. Crucial evidence, such as location data of the date of the incident has not been gathered, which reflects weakness of the investigation.

11. One of the primary objects of bail is merely to secure the presence of the accused during trial. The applicant statedly has deep roots in the society and has an unblemished record with no prior criminal involvements in NDPS, hence poses no flight risk.

12. The co-accused persons- Neeraj and Shankar have been granted bail *vide* order dated 26.11.2024 and 07.08.2024, respectively passed by Co-ordinate bench of this Court. I am of the view that the applicant deserves concession of bail on the ground of parity as well.

13. Apart from the parity, it is borne out that the role attributed to the Applicant is on lesser footing, since the case set up by the prosecution is that Shankar and Neeraj (co-accused persons) were the supplier of the contraband and the applicant herein was merely a carrier, if at all.

14. The applicant has unblemished criminal antecedents, no past NDPS



involvement, and no link to the vehicle from which the contraband was allegedly recovered.

15. Applicant is being kept in preventive custody merely on an unfounded suspicion that if he is let out, he may either tamper with evidence and/ or influence witnesses. There is no probability of tampering with evidence as the same has already been seized by the investigating agency. As regards witnesses, they are all official and therefore, unlikely to be influenced, even if there is any such apprehension by the prosecution.

16. As an upshot and taking a wholesome view of the matter, the applicant is directed to be released on bail on her furnishing personal bond with solvent surety of like amount to the satisfaction of the Trial Court/Duty Judge concerned as the case may be, subject to the other usual conditions to be imposed by the learned Trial Court/Duty Court.

17. Any observation made herein above is only for the purpose of disposing of the instant bail application and not to be construed, in anymanner, as any expression on the merits of the pending case and the trial shall proceed without being influenced either way by the same. In case the applicant is found involved in any repeat offence while on bail, the prosecution shall be at liberty to seek cancellation of the bail granted to the applicant in the present case vide instant order.

18. Accordingly, the bail application alongwith pending application, if any stands disposed of.

ARUN MONGA, J

SEPTEMBER 19, 2025/SV