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

+ **BAIL APPLN. 1350/2025**

GAURAV KUMAR @ GAURAV AGGARWAL

.....Applicant

Through: Mr. Vinay Kumar, Adv.

versus

STATE GOVT. OF NCT OF DELHIRespondent

Through: Ms. Richa Dhawan, APP
for the State.

Insp. Santosh Kumar
Gupta, PS Kashmere Gate.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **08.08.2025**

1. The present application is filed seeking regular bail in FIR No. 261/2024 dated 09.05.2024, registered at Police Station Kashmeri Gate for the offence punishable under Section 22/25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act').

2. Briefly stated, on 09.05.2024, on the basis of a secret information pertaining to the transport of restricted medicine, a raiding team was constituted and accused Brijesh was apprehended. Thereafter, the auto which the accused Brijesh was driving was searched and a recovery of 2.16 kg of restricted medicine, that is, 30 Packets (18000 tablets of Alprazolam) was effected. It is alleged that thereafter, on the instance of accused Brijesh, the accused Amar was apprehended and a recovery of 2.16 Kg of Alprazolam tablets was made from a polythene bag being carried by him.

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3. On 11.05.2024, a raid was conducted at the instance of the accused Amar, pursuant to which, two persons namely, Faiz Ahmad and Umar, were apprehended. Thereafter, three *gatta peti* containing a total of 180000 tablets of Alprazolam weighing 21.6 Kg was found, and the same were recovered. During interrogation, the co-accused persons– Faiz Ahmad and Umar disclosed that they had stored restricted medicine at a shop situated at Gali No. 05 Loco Colony, Aligarh, Uttar Pradesh.

4. Thereafter, a raid was conducted at the said shop and a recovery of 3,12,000 restricted tablets of Alprazolam, weighing approximately 39.960 Kg was made.

5. Subsequently, during the course of the investigation, several other accused persons were arrested and recoveries of huge quantities of restricted medications such as Alprazolam and Tramadol tablets were affected.

6. On 22.05.2024, a raid was conducted at the instance of the accused Umar, pursuant to which, the applicant was apprehended. Thereafter, 31 packets (6960 capsules) of tramadol tablets weighing 3.695 Kgs, 450 tramadol injections (900 ml) and 10,200 Alprazolam tablets weighing 1.122 Kgs were recovered.

7. The learned counsel for the applicant submits that the applicant is innocent and has been falsely implicated in the present case.

8. He submits that the Investigating Officer in the present case has been suspended and the Head Constable who recorded the secret information has been dismissed on the allegation of extortion. He states that the same suggests that the investigation suffers from grave infirmities.



9. He submits that even though the alleged recovery happened in a public place, there are no independent witnesses and no endeavour was made by the prosecution to photograph or videotape the alleged recovery either.

10. He submits that the applicant was arrested on 22.05.2024 and has been in custody since then, despite which, the matter is still at the stage of arguments on charge.

11. He submits that the applicant was a medical store owner and could legally store medical drugs in a large quantity.

12. He further submits that co-accused Koshinder, who was apprehended on the basis of disclosure of co-accused Umar and from whom a recovery of 6000 tablets of Tramadol was made, has already been enlarged on bail by this Court.

13. *Per contra*, the learned Additional Public Prosecutor for the State vehemently opposes the grant of any relief to the applicant and submits that the present case involves recovery of commercial quantity, and therefore, rigours of Section 37 of the NDPS Act are attracted against the applicant.

14. I have heard the learned counsel appearing for the parties and perused the record.

15. 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.

16. 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.”

17. It is the case of the prosecution that on the basis of disclosure of the co-accused Umar, the applicant was apprehended and a recovery of 31 packets (6960 capsules) of tramadol tablets weighing 3.695 Kgs, 450 tramadol injections (900 ml) and 10,200 Alprazolam tablets weighing 1.122 Kgs was made.

18. The learned counsel for the applicant argued that doubt is cast on recovery of contraband as no independent witness was joined by the prosecution and no photography or videography



was done, even though the applicant was apprehended in a public place on the basis of the disclosure made by co-accused Umar.

19. 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.

20. 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.

21. 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.

22. 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.

23. The chargesheet mentions that although 3-4 passersby



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 specially when the officers associated with the raid and investigation have been suspended on the allegation of extortion from the accused persons.

24. Much emphasis has been laid by the prosecution on the fact that since commercial quantity of contraband was recovered from the applicant, therefore, the rigours of Section 37 of the NDPS Act are attracted against him.

25. The Hon'ble Apex Court, in the case of ***Union of India v. Shiv Shanker Kesari : (2007) 7 SCC 798***, has observed as under:

“11. The court while considering the application for bail with reference to Section 37 of the Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty.

12. Additionally, the court has to record a finding that while on bail the accused is not likely to commit any offence and there should also exist some materials to come to such a conclusion.”

26. *Prima facie*, in the absence of any independent corroboration or any financial trail linking the applicant to the crime, at this stage cannot be said to attract the bar of Section 37 of the NDPS Act.

27. Thus, while the case involves a huge recovery of



contraband, in the opinion of this Court, at this stage, there are reasonable grounds to doubt the credibility of the case of the prosecution against the applicant.

28. It is the contention of the applicant that he is a medical store owner and could legally store medical drugs in a large quantity.

29. It is contended that, storing drugs in a large quantity cannot be illegal per se and distributing the same without proper record can at best be a violation of Rule 65 of the Drugs and Cosmetics Rule, 1945.

30. It is the contention of the learned Additional Public Prosecutor for the state that at the time of conducting the raid, the applicant had failed to produce the stock register to show authorized stocking of drugs. The defence and the allegations in this regard can only be ascertained after the evidence is led and cannot be commented upon at this stage.

31. It is relevant to observe that the manner in which the investigation has been carried out in the present case casts a serious doubt on the prosecution's case.

32. It is pointed out that the Investigating Officer assigned to the present case previously has been suspended and the Head Constable, who had recorded the secret information, has been dismissed on the allegations of extortion.

33. It is important to note that one co-accused namely Koshinder has been enlarged on regular bail by this Court by order dated 16.01.2025, in BAIL APPLN. 3541/2024 essentially on account of the conduct of the prosecution, which led this Court to opine that prima facie there were reasonable grounds to



believe that the accused was not guilty. The said co-accused was sought to be implicated on the allegations that some restricted medication was recovered from a bag being carried by him, however, the CCTV footage of the alleged spot of recovery showed that he was not carrying any bag at all. It was also noted that the prosecution had not taken any steps to preserve the relevant CCTV footage despite the orders passed by the learned Trial Court.

34. It is further pertinent to note, that this Court while granting bail to co-accused Naved noted, that the camera footage of the store where the police had conducted a raid was allegedly being shut by one of the members of the raiding team and the said footage was also not being taken on record by the police.

35. As noted above, the conduct of the police officers during the course of investigation creates a serious doubt regarding the version of the prosecution and the false implication of the applicant at this stage cannot be ruled out and will be subject to further evidence.

36. It is also relevant to note that in the present case, the matter is at the stage of arguments on charge. The prosecution has cited 48 prosecution witnesses and their examination will take a long time. The applicant has been in custody since 22.05.2024.

37. 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.

38. The applicant is stated to be of clean antecedents and has a family to take care of. Thus, in the opinion of this Court, the



applicant is not likely to commit any offence whilst on bail.

39. In view of the aforesaid factors, this Court is of the opinion that the applicant has made out a *prima facie* case for grant of bail.

40. The applicant is, therefore, directed to be released on bail (if not in custody in any other case) on furnishing a personal bond for a sum of ₹20,000/- 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 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 he would be residing after his release to the concerned IO/SHO and he shall not change the address without informing the concerned IO/SHO;
- e. The applicant shall, upon his release, give his mobile number to the concerned IO and shall keep his mobile phone switched on at all times.

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



42. 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.

43. The present bail application is allowed in the aforementioned terms.

44. All pending applications, if any, also stand disposed of.

AMIT MAHAJAN, J

AUGUST 8, 2025