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

+ **BAIL APPLN. 1364/2025**

WAHID AHMED

.....Applicant

Through: Mr. Sumer Singh Boparai,
Mr. Shubham Raj Anand,
Mr. Surya Pratap Singh,
Mr. Abhilash Kumar
Pathak, Mr. Sidhant
Saraswat and Mr. Sirhaan
Seth, Advocates.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Ms. Richa Dhawan, APP
for the State with ASI
Ramesh Kumar, PS AGS
Crime Branch.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **19.05.2025**

CRL.M.A. 10575/2025 (Exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. The present bail application is filed by the applicant seeking regular bail in FIR No. 155/2021 dated 09.08.2021, registered at Police Station Crime Branch, for offence under Section 20 of the Narcotics Drugs & Psychotropic Substances Act, 1985 ('NDPS Act').
4. The FIR was registered pursuant to a recovery of around 12 Kg of *charas* being effected from the applicant on the basis of secret information. It is the case of the prosecution that the applicant was apprehended and the recovery was effected from

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him when he had come to supply the contraband.

5. During interrogation, the applicant allegedly disclosed that he used to procure the contraband from Nepal from one person, namely, Raju. The applicant further revealed that he was going to supply the contraband to one Intezar and he had earlier also supplied contraband to him in August of 2020, December of 2020, March of 2021 and July of 2021. It is alleged that for each delivery, the applicant used to get ₹10,000/- from co-accused Intezar.

6. CDR connectivity was found between the applicant and co-accused Intezar as well.

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

8. He submits that although the recovery was effected in a public place, no independent witness was joined by the prosecution and no photography or videography was done either.

9. He submits that the prosecution has relied upon the CDR without transcript, whereby, the same cannot qualify as corroborative evidence in trial to establish complicity in crime.

10. He submits that the charges have already been framed in the present case and the matter is still at the stage of prosecution evidence. He submits that no purpose will be served by subjecting the applicant to further incarceration.

11. He further submits that co-accused Intezar has already been enlarged on bail by the learned Trial Court by order dated 19.02.2024.

12. He submits that the applicant has no criminal antecedents and he was merely 19 years of age when he was wrongly implicated in the present case.

13. *Per contra*, the learned Additional Public Prosecutor for
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the State vehemently oppose the grant of bail to the applicant. She submits that the offence relates to recovery of commercial quantity of contraband and the rigours of Section 37 of the NDPS Act would be attracted against the applicant.

14. I have heard the counsel 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. However, period of incarceration is also a relevant factor that is to be considered.

16. In the present case, the applicant has essentially sought bail on the ground of non-joinder of independent witnesses as well as delay in trial. It is further argued that lack of photography or videography to support the recovery casts a doubt on the case of the prosecution.

17. Undisputedly, the recovery in the present case was made at 5:30 PM near a market in a crowded and busy area. The secret information was apparently received around 2:30 PM. Despite having ample time to prepare, the prosecution has neither joined independent witnesses nor taken any photograph or shot any videos to corroborate the recovery.

18. 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

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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.

19. The effort, if any, made by the prosecution to have the search conducted in the presence of the independent witnesses or explanation for no photography or videography would be tested during the course of trial. However, while the absence of the same may not be fatal to the case of the prosecution, at this stage, the benefit cannot be denied to the accused.

20. Even otherwise, insofar as the rigours of Section 37 of the NDPS Act are concerned, it is relevant to note that the applicant is in custody since 09.08.2021. Despite the applicant having languished in custody for more than 3 years and 9 months, only 4 out of 14 prosecution witnesses have been examined till now.

21. It is trite that grant of bail on account of delay in trial and long period of incarceration cannot be said to be fettered by the embargo under Section 37 of the NDPS Act. The Hon'ble Apex Court, in the case of **Mohd. Muslim v. State (NCT of Delhi) : 2023 SCC OnLine SC 352** has observed as under:

"21....Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (ref. Satender Kumar Antil supra). Having regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail.

22. Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not



concluded in time, the injustice wrought on the individual is immeasurable. Jails are overcrowded and their living conditions, more often than not, appalling. According to the Union Home Ministry's response to Parliament, the National Crime Records Bureau had recorded that as on 31st December 2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,069 lakhs in the country²⁰. Of these 122,852 were convicts; the rest 4,27,165 were undertrials.

23. The danger of unjust imprisonment, is that inmates are at risk of “prisonisation” a term described by the Kerala High Court in *A Convict Prisoner v. State*²¹ as “a radical transformation” whereby the prisoner:

“loses his identity. He is known by a number. He loses personal possessions. He has no personal relationships. Psychological problems result from loss of freedom, status, possessions, dignity any autonomy of personal life. The inmate culture of prison turns out to be dreadful. The prisoner becomes hostile by ordinary standards. Self-perception changes.”

24. There is a further danger of the prisoner turning to crime, “as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal”²² (also see Donald Clemmer's ‘The Prison Community’ published in 1940²³). Incarceration has further deleterious effects - where the accused belongs to the weakest economic strata : immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials - especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily.”

(emphasis supplied)

22. The Hon’ble Apex Court in ***Rabi Prakash v. State of Odisha : 2023 SCC OnLine SC 1109***, while granting bail to the petitioner therein held as under :

*“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.”

(emphasis supplied)

23. 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. Various courts have recognized that prolonged incarceration undermines the right to life and liberty, guaranteed under Article 21 of the Constitution of India, and therefore, conditional liberty must take precedent over the statutory restrictions under Section 37 of the NDPS Act.

24. In view of the aforesaid, this Court is of the opinion that the applicant has made out a *prima facie* case for grant of bail on the ground of absence of independent witnesses, no photography or videography of the recovery and prolonged delay in trial.

25. The applicant is also stated to be of clean antecedents, and is thus not likely to commit any offence whilst on bail.

26. In view of the above, the applicant is directed to be released on bail 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 learned Trial Court;



c. The applicant shall appear before the learned Trial Court on every date of hearing, unless his appearance is exempted;

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, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.

27. 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.

28. 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.

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

AMIT MAHAJAN, J

MAY 19, 2025

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