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

+ BAIL APPLN. 1527/2025

MUNEESH KUMAR

.....Petitioner

Through: Mr.Prateek Bajaj, Advocate

versus

STATE OF NCT OF DELHI

.....Respondent

**Through: Ms. Priyanka Dalal, APP for State
with SI Rahul**

CORAM:

HON'BLE MR. JUSTICE ARUN MONGA

ORDER

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28.08.2025

1. The applicant is before this Court having remained under incarceration since 07.05.2024, for a period of 1 year 3 months and 22 days seeking indulgence of this Court for grant of bail during pendency of the trial in the criminal proceedings arising out of FIR No. 92/2024 dated 01.05.2024, for alleged offence under Section 21 of the NDPS Act registered at P.S. Crime Branch, Delhi.

2. Per FIR, On 01.05.2024, a Crime Branch team comprising SI Jagseer Singh and other staff received secret information from an informer that one Rizwan would come near the public toilet close to Gate No. 5, Kashmere Gate Metro Station between 03:00–03:30 PM to supply smack/heroin.

2.1 The informer was verified, and Inspector Umesh Sati and ACP were



informed. A trap was laid with two private cars (DL 2CBE 2329 Brezza & DL 2CBA 3032 Swift). Attempts to join public witnesses failed.

2.2 At about 03:20 PM, Rizwan was identified by the informer and apprehended. After informing him of his legal rights u/s 50 NDPS Act, Rizwan refused to be searched before a Magistrate/Gazetted Officer. On personal search, 280 grams of heroin was recovered from his pant pocket, packed in polythene, tested positive with the FSL kit, weighed, sealed, marked Parcel A, and seized.

2.3 Seizure memo was prepared; Rizwan's thumb impression and witnesses' signatures were obtained. The seal was handed over to HC Vikas. A rukka was prepared, and the case was registered under Section 21 NDPS Act. The seized parcel and FIR copy were handed to HC Vikas for compliance u/s 55 NDPS Act. Investigation was assigned to ASI Md. Rahishuddin.

2.4 During the course of interrogation, accused Rizwan Ali disclosed that he used to procure drugs from the Applicant Munish, for further sale in different parts of Delhi and NCR to various customers. He further stated that on a recent occasion, he had brought 300 grams of smack from Applicant Munish, out of which he had already supplied 20 grams to Salim, a resident of his native village *Unkalan, District Shahjahanpur, U.P.* The remaining 280 grams of heroin was in his possession at the time of his apprehension and was meant to be delivered to a customer in Delhi.

3. Learned counsel for the applicant would argue on the lines of grounds taken in the petition *inter alia* urging as below:-

3.1 That no recovery has been effected from the personal search of the



applicant. The alleged recovery shown from the house of the applicant is nothing but false, planted and fabricated. Such a recovery, being tainted with illegality, cannot be relied upon to fasten criminal liability upon the applicant.

3.2 That the alleged recovery from the applicant's house is in gross violation of Section 42 of the NDPS Act. In terms of Section 42 & (2), only an empowered officer is competent to conduct a search in a building or enclosed place, after recording the information in writing and sending a copy to his immediate superior within 72 hours. In the present case: The seizure was conducted by ASI Md. Rahishuddin, who is not an empowered officer under the Act, No information was recorded in writing prior to the alleged raid, No compliance was made under Section 42(2) by forwarding the information to a superior officer within the statutory period. Hence, the alleged recovery is rendered illegal and inadmissible in evidence.

3.3 That procedural compliance under Section 42 of the NDPS Act is mandatory in nature, and non-compliance thereof vitiates the trial. The Hon'ble Supreme Court in *Tofan Singh v. State of Tamil Nadu*, AIR 2020 SC 5592, has reiterated that any deviation from statutory safeguards is fatal to the prosecution case.

3.4 That no independent public witness was joined during the course of the search and seizure, thereby violating Section 100 Cr.P.C. The IO made no genuine effort to request local residents to join as witnesses. The absence of independent corroboration creates a serious dent in the prosecution story.

3.5 That no site plan of the alleged place of recovery i.e., the house of the applicant, has been prepared by the IO. This omission makes it doubtful whether the alleged recovery was effected from the applicant's premises at



all.

3.6 That the alleged disclosure statement which is said to have led to recovery of 44 grams of heroin from the applicant's house was never recorded in writing, nor does it form part of the final report under Section 173 Cr.P.C. The alleged link between the disclosure and the recovery is thus completely missing.

3.7 That the alleged recovery from the applicant is of 44 grams of heroin, which falls under the category of intermediate quantity and not commercial quantity. Therefore, the rigours of Section 37 of the NDPS Act are not attracted.

3.8 That no material exists to establish any criminal conspiracy between the applicant and the co-accused persons. Even the disclosure statements of the co-accused Rizwan Ali and Saleem did not name the applicant initially. Instead, another person namely "Ashok" was named, who was later released by the IO without recording his statement. The applicant's name surfaced only in supplementary disclosure statements dated 07.05.2024, making the case of the prosecution highly doubtful.

3.9 That the co-accused Saleem (alleged recovery of 21 grams heroin) and Shakir (alleged recovery of 50 grams heroin) have already been granted bail by this Court. The applicant is similarly situated, and therefore, bail is sought on the ground of parity.

3.10 That the applicant is an innocent person who has been falsely implicated. The facts of the present case are fabricated, concocted and without any legal basis. The broken chain of evidence and procedural irregularities make it unsafe to deny bail to the applicant.

4. Opposing the above submissions, the Learned APP for the State



submits that the applicant is not entitled to bail at this stage, as there is a genuine risk of absconding or tampering with evidence, and he is likely to commit similar offences. The recovery in the present case is of commercial quantity, attracting the rigours of Section 37 of the NDPS Act, 1985. The petitioner is a habitual offender with two prior NDPS cases, clearly establishing his criminal propensity. Drug trafficking poses a grave threat to society, particularly affecting the younger generation and the economy. In view of the commercial quantity involved, the petitioner's antecedents, the statutory bar under Section 37, and settled Supreme Court law, he does not deserve the concession of bail.

5. Having heard, it appears to be a case for bail. Let us see how.

6. Per arguments of the learned counsel for the applicant, case set up is that no contraband was recovered from the applicant's personal search, and the alleged house recovery is fabricated and illegal. The search violated Section 42 NDPS Act as it was conducted by an unauthorized officer without recording information or notifying a superior within the statutory period, rendering the recovery inadmissible. Procedural compliance under Section 42 is mandatory. No independent witnesses were joined, no site plan was prepared, and the alleged disclosure leading to recovery was neither written nor included in the final report. The recovered quantity (44g heroin) is intermediate, not commercial, so Section 37 does not apply. There is no evidence of conspiracy, and the applicant was not initially named in co-accused statements; his name appeared only in later disclosures. Co-accused with similar or higher recovery have been granted bail, so parity applies. The case suffers from broken chain of evidence, procedural lapses and false implication.



7. I am of the view that the arguments of the learned counsel for the applicant qua his non culpability seem to have merit, but all that is matter of trial, to be adjudicated at the appropriate stage.

8. As of now, further incarceration would serve no useful purpose, as the trial is unlikely to conclude in the near future, and continued detention would amount to punitive confinement before conviction, contrary to the settled principle that bail is the rule and jail the exception, especially when the applicant is neither a flight risk nor a threat to the fairness of the trial.

9. 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.

10. Furthermore, the applicant has already been in custody for more than 1 year, 3 months and 22 days and the trial is proceeding at snail's pace. As regards the applicant either jumping the bail or otherwise not making himself available during the trial or committing the repeat offences, the same seems to be rather an unfounded suspicion. Pertinent it is to note that the investigation in the matter has been completed qua the applicant.

11. As regards the apprehension of tampering with evidence is concerned or influencing or intimidating the witnesses, the applicant has been in custody since 07.05.2024 has cooperated throughout the investigation, and there is nothing to suggest that he would abscond. One of the primary objects of bail is to secure the presence of the accused during trial. The continued detention may amount to punishment before conviction,



at this stage.

12. The applicant is also the sole breadwinner and caretaker of his family, and his prolonged detention is causing severe hardship to his dependents who are living under penury.

13. Given that the petitioner is already incarcerated since 07.05.2024 the nature of the contraband and the quantity thereof and also the allegation that there has been non compliance of Section 42 though the same is matter of trial, I am of the view that at this stage he is entitled to bail.

14. As an upshot and taking a wholesome view of the matter, the applicant is directed to be released on bail on his 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

15. Any observation made herein above is only for the purpose of disposing of the instant bail application and not to be construed, in any manner, as any expression on the merits of the pending case and the trial shall proceed without being influenced either way by the same.

16. Accordingly, the bail application stands disposed of.

ARUN MONGA, J

AUGUST 28, 2025/SV