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

+ **BAIL APPLN. 1608/2025**

MD. AFSAR

.....Petitioner

Through: Mr. Faraz Nabi, Mr. Mohd. Nadeem,
Ms. Razia, Mr. Waseem Khan,
Advocates

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Tarang Srivastava, APP for the
State with SI Sahil, PS Anand Parbat

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

11.07.2025

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1. The present application filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹ (Corresponding to Section 439 of the Code of Criminal Procedure, 1973²) seeks grant of regular bail in the proceedings arising from FIR No. 200/2023 dated 11th May, 2023, registered under Sections 20, 61 and 85 of Narcotic Drugs and Psychotropic Substances Act, 1985³ at P.S. Anand Parbat, New Delhi.

2. Briefly, the case of the prosecution is as follows:

2.1. On 11th May, 2023, around 7:30PM, a secret informer informed the officers deployed for area patrolling near Ramleela Park, Nehru Nagar about supply of the narcotic substance 'Ganja' by two men on a scooty. This secret

¹ "BNSS"

² "CrPC"



information was shared with the SHO – P.S. Anand Parbat, who verified the fact, and conveyed the said information to the ACP – Patel Nagar Sub-Division. The ACP then directed the SHO to immediately conduct a raid.

2.2. Around 8:00 PM, at the instance of the secret informer, two men, who were riding a navy blue scooty, were apprehended along with the three bags in their possession. The Applicant herein was identified as the person riding the scooty and the person riding pillion was co-accused Munna. Two of the three bags containing Ganja were placed between them, while the third bag was on the floorboard of the scooty. Thereafter, senior police officials were informed of the recovery of Ganja and notices under Section 50 of the NDPS Act were served upon both the individuals.

2.3. Subsequently, ACP – Patel Nagar arrived at the spot and questioned the two accused persons. In his presence, the SI removed the three bags from the scooty and inspected them. A total of 18 small packets of about 2 Kgs each (total weight including the bags being 37.150 Kg) were recovered from the three bags found in the possession of the accused persons. All of the said packets were then placed back into the three bags and the said bags were packed in white cloth (*pullandas*), sealed and seized vide a seizure memo. Thereafter the three separate *pullandas* were taken into police possession, were counter sealed by the SHO and deposited with the Malkhana. All of the mandatory conditions under NDPS Act, in terms of recovery of narcotic substance, were duly complied with by the officers. The navy blue scooty on which the accused persons were travelling, was also seized and it was discovered that the same was registered under the name of the Applicant.

2.4. Based on the recoveries made, an FIR No. 200/2023 was registered at

³ “NDPS Act”



P.S. Anand Parbat under Sections 20, 61 and 85 of the NDPS Act and the two accused persons, including the Applicant, were subsequently arrested.

2.5. During the course of investigation, the accused persons, including the Applicant, disclosed that they had stored some Ganja in Munna's rented accommodation in Bapa Nagar. Thereafter, police officials went to the said rented accommodation, along with the two accused persons, and five bags containing Ganja were recovered from the said accommodation at their instance. A total of 35 small packets, weighing about 2 Kgs each were recovered from the said five bags, with the total weight being 72.100 Kgs (including the weight of the bags). The said five bags were also packed in white cloth (*pullandas*), sealed, and seized *vide* another seizure memo. These five *pullandas* were also taken into police possession, counter sealed by the SHO and deposited with the Malkhana.

2.6. Thereafter, in compliance with Section 52A of the NDPS Act, an application for sampling was filed before the Metropolitan Magistrate, Tis Hazari Courts and accordingly, sampling of the recovered substance was undertaken. Eight samples were taken from each of the eight *pullandas* recovered by the police, along with duplicates and the same were marked, kept in two brown envelopes and sealed. Thereafter, the eight original samples were sent to the FSL for examination and report, which opined that the substance recovered was Ganja. Subsequently, after completion of the investigation, a chargesheet has been filed in the present matter before the Trial Court. Charges have also been framed against the accused persons, including the Applicant, on 14th May, 2024, under Sections 20(c), 25 and 29 of the NDPS Act.

3. Counsel for the Applicant seeks grant of bail on the following



grounds:

3.1. The Applicant has been falsely implicated in the present case, and the alleged contraband was planted on him. No recovery was effected from the Applicant at the alleged spot where he was apprehended. It is further submitted that the Applicant has no prior criminal antecedents and has never been involved in any criminal case till date.

3.2. The mandatory notice under Section 50 of NDPS Act was not served on the Applicant in accordance with law. There is nothing on record to demonstrate that he was informed of his legal rights or that he understood the same. The notice merely states that he waived his right to be searched in the presence of a Magistrate. It is a well-settled position of law that merely obtaining a waiver is not sufficient; the accused must first be duly informed of his right under Section 50 of the NDPS Act, and a clear distinction exists between apprising him of an 'option' and informing him about his 'right' under the said provision.

3.3. Furthermore, the search conducted at the rented accommodation in Bapa Nagar was carried out at night, without prior recording of information by the Investigating Officer, in contravention of Section 42(1) of the NDPS Act. No warrant or authorization from a Gazetted Officer or an ACP was obtained prior to the search. It was only after the search that intimation was given to the ACP. Moreover, the weighing of the recovered substances was not carried out in the presence of the ACP, in violation of the mandatory safeguards under the Act.

3.4. No independent or public witness was present during the search of the rented premises. Even the owner of the said premises, whose statement has since been recorded under Section 161 CrPC, was not present during the



search. The entire search was carried out solely on the basis of the alleged disclosure statements. No search list was prepared at the spot, nor was the FSL form filled by the IO immediately after the search. These glaring lapses clearly indicate gross violations of the procedures prescribed under the NDPS Act.

3.5. The co-accused Munna, who stands on an equal footing with the present Applicant, has already been granted regular bail by this Court *vide* order dated 7th February, 2025 in BAIL APPLN. 4062/2024. In view of the principle of parity, the Applicant is also entitled to the benefit of the bail.

3.6. The Applicant has been in custody since 12th May, 2023 i.e., for approximately two years and two months. The prosecution has cited more than 16 witnesses to be examined during trial; however, till date, only four witnesses have been examined. The next date of hearing before the Trial Court is scheduled for 12th September, 2025. It is thus evident that the trial is likely to take a long time to conclude, and thus, the Applicant should not be kept in custody any longer.

4. On the other hand, Mr. Tarang Srivastava, APP for the State, opposes the present bail application. He submits that since the quantity of contraband allegedly recovered from the Applicant is 72.100 kg of Ganja, the present case falls within the category of ‘commercial quantity’ in accordance with the Act. Consequently, the Applicant must satisfy the twin condition under Section 37 of the NDPS Act. He submits that the ground of the alleged violation of Section 50 of NDPS Act is immaterial for the purpose of the consideration of bail, in light of settled position of law on this matter. He further submits that there is sufficient material on record to implicate the Applicant in the present case, including his disclosure statement, which



directly led to the recovery of 72.100 Kgs of Ganja from the rented accommodation.

5. The Court has carefully considered the submissions advanced by both sides. It is well established through a catena of judgments by the Supreme Court that the object of granting bail is neither punitive nor preventative. The primary aim sought to be achieved by bail is to secure the attendance of the accused person at the trial⁴. However, since the alleged recovery of 72.1 Kgs of Ganja clearly falls within the prescribed commercial quantity, the rigours of Section 37 of the NDPS Act are squarely attracted. Accordingly, the Applicant must satisfy the twin conditions stipulated under Section 37(1)(b) of the Act for grant of bail, namely: (i) the Court must be satisfied that there are reasonable grounds to believe the accused is not guilty of the alleged offence, and (ii) the accused is not likely to commit any offence while on bail.

6. In response to the first condition, the Applicant has contended that the procedure of search and seizure, as contemplated under the NDPS Act, was not duly followed by the police, when they went to search Munna's rented accommodation. It is further noted that even the owner of the premises was not present at the time of the search, and in his statement under Section 161 of CrPC, he has not disclosed anything incriminating against the Applicant. Further, there is merit in the Applicant's contention that no independent witnesses were present either at the time of recovery of the substance from the scooty, or during the search of the rented premise. While the ultimate effect of these procedural lapses would have to be determined at trial, after

⁴ See also: *Sanjay Chandra v. CBI*, (2012) 1 SCC 40; *Satender Kumar Antil v. Central Bureau of Investigation*, (2022) 10 SCC 51.



the parties have led evidence, in the *prima facie* opinion of this Court, at this stage, these lapses weigh in favour of the Applicant.

7. As regards the second condition under Section 37(1)(b) of the NDPS Act, it is noted that the Applicant has no prior criminal antecedents and has not been involved in any previous criminal activity. He is a first-time offender and as such, in the opinion of the Court, is not likely to engage in criminal activity while on bail.

8. The chargesheet was filed against the Applicant on 25th July, 2023 and charges were framed against him on 14th May, 2024. Although the trial is progressing, however, till date, only 4 out of 16 witnesses cited by the prosecution have been examined. Thus, it appears that trial is likely to take some time to conclude. As per the Nominal Roll as on 2nd July, 2025, the Applicant has undergone 2 years 1 month and 21 days of custody. His jail conduct is noted to be satisfactory. In such circumstances, the Court must strike a balance between the fundamental right to a speedy trial, an integral aspect of the right to life and liberty under Article 21 of the Constitution of India, and the stringent requirements of Section 37 of the NDPS Act. The right to life and personal liberty cannot be undermined by unwarranted delays in the judicial process, particularly when such delays are neither attributable to the accused nor adequately justified by the prosecution with compelling reasons. While the rigours of Section 37 must be meticulously applied, they cannot override the constitutional mandate for timely justice. In this regard, it must be noted that a co-ordinate bench of this Court in ***Lali v. State of NCT of Delhi***⁵, while relying upon the judgments of the Supreme



Court in *Dheeraj Kumar Shukla v State of U.P.*⁶ and *Mohd. Muslim alias Hussain v. State (NCT of Delhi)*⁷, has observed that the grant of bail on the grounds of undue delay in trial cannot be said to be fettered by Section 37 of the NDPS Act.

9. Moreover, it is noticed that almost all of the witnesses cited by the prosecution are police officers or government officials, except for the owner of the rented accommodation. Therefore, the possibility of the Applicant influencing the witnesses appears to be extremely remote.

10. Furthermore, the co-accused – Munna has already secured regular bail by this court *vide* order dated 7th February, 2025 in BAIL APPLN. 4062/2024. In absence of any distinguishing circumstance, the Applicant is also entitled to the benefit of bail on the principle of parity.

11. In light of the foregoing, the Applicant is directed to be released on bail on furnishing a personal bond for a sum of ₹25,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court, on the following conditions:

- a. The Applicant shall cooperate in any further investigation as and when directed by the concerned IO;
- b. 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;
- c. The Applicant shall under no circumstance leave the country without the permission of the learned Trial Court;

⁶ 2023 SCC OnLine SC 918

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- d. The Applicant shall appear before the Trial Court as and when directed;
- e. 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;
- f. 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.
- g. The Applicant shall report to the concerned IO on the Fourth Friday of every month at 4:00PM and shall not be kept waiting for more than one hour for this purpose.
12. 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.
13. 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 should also not be taken as an expression of opinion on the merits of the case.
14. The bail application is allowed in the afore-mentioned terms.

SANJEEV NARULA, J

JULY 11, 2025/ab