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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 1862/2025 & CRL.M.A. 15028/2025,
CRL.M.A. 15029/2025

JAKIR HUSSAIN

.....Applicant

Through: Mr. Suraj Prakash Sharma,
Adv.

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Ms. Priyanka Dalal, APP
for the State.
SI Kartar Singh Rawat,
Anti Narcotics Cell
(OND)

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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09.09.2025

1. The present application has been filed by the applicant seeking regular bail in FIR No.433/2023, dated 24.06.2023, registered at Police Station Narela for the offences under Sections 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act').
2. Briefly stated, it is alleged that on 24.06.2023, a secret information was received that the applicant was indulged in the sale of *Heroin*, whereafter, a raiding team was constituted.
3. It is alleged that after reaching the designated spot, the informer pointed towards the applicant, whereafter, the applicant was apprehended from his house.
4. It is alleged that on his personal search, 282 grams of *Heroin* was recovered from the applicant. Thereafter, the



applicant was arrested on 24.06.2023 and has been in custody since then.

5. The bail application filed by the applicant on an earlier occasion was dismissed by order dated 08.11.2024 not agreeing to his contentions that the notice under Section 50 of the NDPS Act suffered from infirmities. It was noted that no other arguments were raised by the applicant. The present application was thereafter filed raising further grounds.

6. It is submitted by the learned counsel for the applicant that the FIR was registered on a secret information and the applicant was apprehended from his house. He submits that despite being the house located in a busy area, the Police has failed to include any public witness in the alleged recovery of contraband. He submits that the Police has also not done any photography or videography of the alleged recovery.

7. He further contends that the applicant has already been in custody for than two years and has to take care of his minor daughter and other family members being the only bread earner.

8. *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.

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

10. 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.

11. 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.”

12. Undisputedly, the accused is not entitled to file multiple bail applications without there being any change in substantial circumstances. It is relevant to note that the application filed by the applicant on earlier occasion was dismissed by order dated



08.11.2024 noting that the only ground raised by the applicant at that stage was that the notice under Section 50 of the NDPS Act suffered from infirmities.

13. This Court had also noted at that stage that not much period had been spent by the applicant in custody.

14. It is settled law that each day of custody can in some circumstances give rise to further cause of action to the applicant to maintain a bail application. As noted above, the applicant on earlier occasion had sought bail only urging that the notice under Section 50 of the NDPS Act is defective. Though the grounds raised in the present application could have been urged earlier, however, considering that the applicant has spent further 10 months in custody, this Court considers it apposite to decide the present application on merits.

15. It is the case of the prosecution that on the basis of secret information the applicant was apprehended and 282 grams of *Heroin* was recovered from him.

16. 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 from his house which is located in a busy place.

17. 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.



18. 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.

19. 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.

20. 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.

21. It is pertinent to note that 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.

22. 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.”

23. *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 be sufficient to attract the bar of Section 37 of the NDPS Act.

24. Thus, while the case involves a 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.

25. Delay in trial and long period of incarceration is also an important factor which has to be kept in mind while considering the application for bail.

26. In the present case the applicant has been in custody since 24.06.2023. It is pointed out that only 8 out of 34 witnesses have been examined and there is no likelihood of the trial being completed in the near future.

27. 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 wrecked 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. State²¹ 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)

28. The Hon'ble Apex Court in the case of *Man Mandal & Anr. v. The State of West Bengal* : SLP(CRL.) No. 8656/2023



had granted bail to the petitioner therein, in an FIR for offences under the NDPS Act, on the ground that the accused had been incarcerated for a period of almost two years and the trial was likely going to take considerable amount of time.

29. 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)

30. 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.

31. The applicant as on today has spent more than two years and three months in custody and is stated to have clean antecedents. It is further pointed out that the applicant is the sole bread earner of his family and has a wife and minor daughter to take care of.



32. Therefore, in the opinion of this Court, the applicant has *prima facie* established a case for grant of bail.

33. In view of the above, the applicant is, therefore, 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/Duty MM / Link MM, 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 boundaries of the country without the permission of the learned 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 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.

34. 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.

35. 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.

36. The bail application is allowed in the aforementioned terms. Pending applications also stand disposed of.

AMIT MAHAJAN, J

SEPTEMBER 9, 2025
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