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

+ **BAIL APPLN. 1873/2025 & CRL.M.(BAIL) 1081/2025**

HUKUM CHAND @ TITU

.....Petitioner

Through: Ms.Meera Kaura Patel, Ms.Zainab
Hussain, Mr.Vikash Vadit,
Ms.Manika Pandey and Ms.Ritika
Saini, Advocates

versus

STATE OF NCT OF DELHI & ANR.

.....Respondents

Through: Ms.Richa Dhawan, APP for the State
Ms. Richa Dhawan alongwith SI
Sudhir Kumar, P.S.-ANTF/Crime
Branch, Delhi

CORAM:

HON'BLE MR. JUSTICE ARUN MONGA

ORDER

10.09.2025

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1. Claiming himself to be falsely implicated, the applicant herein seeks indulgence of this Court for grant of bail during pendency of the trial in the criminal proceedings arising out of FIR No.159/2021 dated 16.08.2021 for the offences punishable under Sections 21, 25, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act'), registered at Police Station Crime Branch, Delhi.

2. Briefly speaking, per FIR, on 16.08.2021, a secret information was received that the applicant would come on Scooty bearing No. DL-11G-2499 near Dhan Dhan Satguru Park to supply heroin. Acting upon the information, immediate raid was ordered by the ACP. Attempts were made



to join public witnesses, but none agreed. Thereafter, the applicant was seen arriving on said Scooty and was identified by the informer. He was apprehended by the team.

2.1 Subsequently, the applicant was apprised of his legal rights under Section 50 NDPS Act and served a written notice, but he declined to be searched before a Magistrate or Gazetted Officer and recorded his refusal in writing.

2.2 His personal search yielded nothing incriminating, but upon search of his Scooty, a black polythene bag was recovered from the trunk, containing two transparent waxy bags tied with rubber bands. On checking with the field testing kit, the powder was found to be heroin, weighing 700 grams and 300 grams, total of 1 Kg. The Scooty along with keys was also seized. Applicant was arrested.

3. In the aforesaid backdrop, I have heard the rival contentions and perused the case file.

4. Learned counsel submits that the co-accused Rohit Fizula is on bail and the applicant also deserves the concession of bail on the ground of parity alone.

5. Learned counsel for the applicant would further argue on the lines of grounds pleaded in the petition *inter alia* as below:-

5.1 That there is an inordinate delay in the trial and the applicant is in custody since 16.08.2021, having already spent about 2 years and 11 months in custody, but only 5 witnesses out of 25 witnesses have been examined till date. All witnesses are officials, leaving no chance of tampering with the evidence. She would contend that the applicant has already undergone substantial incarceration and is deprived of his personal liberty, resulting in



violation of his fundamental right under Article 21 of the Constitution of India. She would place reliance on ***Mohd. Muslim v. State (NCT of Delhi), 2023 SCC OnLine SC 352, Rabi Prakash v. State of Odisha, SLP (Cri.) No.4169/2023***, wherein prolonged incarceration and undue delay in trial were held sufficient grounds for bail under the NDPS Act, notwithstanding Section 37.

5.2 That the story in the FIR is concocted and fabricated to falsely implicate the applicant. The applicant was never searched as alleged, and no recovery was made from his possession. She would further contend that the applicant never made any confessional statement voluntarily, and his signatures were forcibly obtained under duress on the alleged disclosure statement and on the purported notice under Section 50 NDPS Act. No valid notice under Section 50 was given, nor was there compliance with Section 50(5) and (6). The mandatory requirement that recovery be effected in the presence of a Magistrate or Gazetted Officer was not followed, as reinforced in ***Arif Khan v. State of Uttarakhand, (2018) 18 SCC 380***.

5.3 That there was also non-compliance of Section 51 NDPS Act read with Section 100(4) Cr.P.C (Section 103(4) BNSS), as no independent witnesses were joined despite availability in a crowded area. No CCTV footage or videography of the search was conducted, contrary to the NCB Guidelines. She would further rely on judgments rendered by the High Court in ***Zakir Hussain v. State (NCT of Delhi), 2025 SCC OnLine Del 253*** wherein non-joining of public witnesses and long incarceration are relevant factors in granting bail.

5.4 That there was non-compliance with Section 52A(2) of the NDPS Act and Standing Orders regarding sampling and inventory. The mandatory



procedure of preparing inventory, drawing samples in presence of Magistrate, and certification was not followed. She would contend that even Inspector Rakesh Duhan admitted in cross-examination that he did not personally check the case property while preparing the inventory. She would place reliance on ***Bharat Aambale v. State of Chhattisgarh, 2025 SCC OnLine SC 110, Yusuf v. State, 2023 SCC OnLine SC 1328, Mohit Bhati v. State (NCT of Delhi), 2024 SCC OnLine Del 9571, and Vikas Kashyap v. State of NCT of Delhi, 2024 SCC OnLine Del 4729***, wherein non-compliance of Section 52A has been held to vitiate trial and entitle the accused to bail.

5.5 That the applicant has been falsely implicated and the recoveries allegedly made from him are planted. The alleged recovery from Scooty No. DL 11 G 2499 is doubtful as no traces of powder were found and the Scooty was not sent to FSL. The recovery was not made in the presence of independent witnesses. Further, the FSL report dated 29.04.2022 describes the seized substance as reddish coloured powder, while the FIR and chargesheet describe it as light pink, casting doubt on the alleged recovery. She would also argue that the investigating officer did not use a government vehicle for the raid, but a private one, the details of which are not mentioned, further raising doubts on the prosecution story.

5.6 She would urge that since the recovery has already been effected, nothing remains to be recovered, and investigation is complete. There are reasonable grounds for believing that the applicant is not guilty, as required under Section 37 NDPS Act, and his further incarceration serves no purpose. Past antecedents alone cannot justify denial of bail, as held by the Supreme Court in ***Prabhakar Tewari v. State of U.P., (2020) 11 SCC 648***. She would



further urge that the applicant has never misused interim bail, has duly surrendered, and there is no apprehension that he will abscond, tamper with evidence, or influence witnesses. She would thus submit that the applicant, therefore, deserves to be enlarged on bail in the facts and circumstances of the present case.

5.7 The applicant, aged 48, is the sole breadwinner of his family comprising his wife and three minor children (aged 5, 12, and 13). His wife suffers from a diagnosed mental health condition due to the stress of his judicial custody and is unable to care for herself or the children. Interim bail was earlier granted on humanitarian grounds, during which the applicant complied with all conditions and duly surrendered on time. Continued incarceration is causing severe hardship to the family, including financial strain for education, medical expenses, and litigation costs, forcing them to sell property and jewellery and take loans. The applicant has strong societal roots and assures cooperation with investigation and trial if released on bail.

6. Learned APP for the State would oppose the bail plea arguing that the applicant deserves no indulgence from this Court as commercial quantity of psychotropic substances is involved in the incident. She would further submit that there is recovery of 1 Kg of Heroin from the applicant, which is commercial in quantity and the applicant had previously been involved, though later acquitted, in three NDPS cases, namely: FIR No. 95/2002, U/s 21 NDPS Act, PS Narcotics Branch, Delhi (Acquittal); FIR No. 03/2003, U/s 21/29 NDPS Act, PS Narcotics Branch, Delhi (Acquittal); and FIR No. 25/2006, U/s 21 NDPS Act, PS Narcotics Branch, Delhi (Acquittal).

6.1 She would further contend that evidence strongly indicates the accused's involvement in the drug trafficking network. She would urge that



the drug menace gravely affects society, particularly the youth, poses a threat to the nation's social fabric and economy, and generates unlawful profits that fuel continued crimes. Accordingly, the bail application deserves to be dismissed.

7. Having heard, I am of the view that there may be some substance in some of the arguments on merits addressed by the learned counsel for the applicant but the same is matter of trial. However, given the long incarceration of the applicant, which he has already suffered coupled with the fact that the other cases which at the relevant time were pending against him, he stands acquitted, I am of the view that at this stage, it is a fit case for bail. Let us see how.

8. The applicant was arrested on 16.08.2021 and has already remained in custody for a period of approximately 2 years and 11 months, and the progress of the trial has been exceptionally slow with only 5 witnesses out of 25 witnesses have been examined till date. This prolonged incarceration, combined with the snail's pace of proceedings, are contributory factors in the present case for granting bail.

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. The applicant is stated to be the sole breadwinner of his family and he is responsible to tend to them as they are dependent on him for survival. In his absence, the family is moving towards literal starvation and penury.



11. One of the primary objects of bail is merely to secure the presence of the accused during trial. The applicant has no criminal antecedents, poses no flight risk, coupled with the fact that he was granted interim bail on multiple occasions by the learned Sessions Court on humanitarian grounds and that the applicant has not misused the bail concession as accorded to him from time to time.

12. Taking wholesome view of the matter, the application is allowed. 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.

13. 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. In case the applicant is found involved in any repeat offence while on bail, the prosecution shall be at liberty to seek cancellation of the bail granted to the applicant in the present case *vide* instant order.

14. Accordingly, the bail application alongwith pending application stands disposed of.

ARUN MONGA, J

SEPTEMBER 10, 2025
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