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IN THE HIGH COURT OF DELHI AT NEW DELHI
BAIL APPLN. 1895/2025 & CRL.M.A. 15282/2025

KAPIL KUMAR DAGAR

.....Applicant

Through: Mr. Pradeep Yadav, Mr.
Piyush Lakhera and Mr.
Devjeet Gautam, Advs.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Ms. Richa Dhawan, APP
for the State with SI
Vinod, PS Mohan Garden
and ASI Kartar Singh, Spl.
Staff Dwk.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

23.07.2025

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1. By the present bail application, the applicant seeks regular bail in FIR No. 62/2023 dated 23.02.2023, registered at Police Station Mohan Garden, for offences under Sections 8/22/25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act').

2. It is the case of the prosecution that on 23.02.2023, at around 12:43 PM, on the basis of secret information, a van that was being driven by the applicant was stopped while coming from Dwarka Mod towards Najafgarh. It is alleged that a recovery of 61g of Amphetamine Drugs was effected from a polythene being carried by the applicant in the pocket of his jeans. The recovery was effected after 01:15 PM, once the ACP, Najafgarh had reached the spot.

3. Applicant was arrested on 23.02.2023 and is in custody since then.

4. The learned counsel for the applicant submits that the applicant has been falsely arrested in the present case and he is innocent.

BAIL APPLN. 1895/2025

Page 1 of 7



5. He submits that although the recovery was made on the basis of secret information during day time, however, no public witnesses have been associated by the prosecution. He submits that the recovery is not corroborated by any photographs or videography either.

6. He further submits that as per the secret information, the applicant was supposed to come to the spot to procure the drugs from an African citizen for selling the same. He submits that no such African national has been arrested and the prosecution has further failed to unearth the source of the contraband, which shows that the recovered contraband was planted.

7. He submits that the matter is still at the stage of examination of prosecution witnesses and only two out of the listed fifteen prosecution witnesses have been examined till now.

8. *Per contra*, the Additional Public Prosecutor for the State vehemently opposes the grant of any relief to the applicant. She submits that the case relates to recovery of commercial quantity of contraband and the rigours of Section 37 of the NDPS Act are attracted against the applicant.

9. I have heard the counsel 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 fulfill the conditions stipulated in Section 37 of the NDPS Act.

12. Undisputedly, at this stage, the only evidence against the applicant is the secret information and alleged recovery of the contraband. As pointed out by the learned counsel for the applicant, the prosecution has failed to discern the source of the alleged contraband till now.

13. It is not disputed that even though the recovery in the present case was made on the basis of secret information around 01:15 PM on a busy road, however, no public person was joined as a witness, despite sufficient time to do the same. No photography or videography has been done by members of the raiding party either to substantiate the allegations.

14. 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. 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.

15. 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.

16. 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.

17. It is stated in the FIR that although 3-4 passersby were asked to join investigation, however, they refused to join the same. While the veracity of the explanation of the prosecution for non-joinder of independent witnesses and for absence of photography and videography will be tested during the course of the trial, at this stage, the benefit cannot be denied to the applicant.

18. It is also important to note that the applicant was arrested on 25.02.2023 and he has been in custody since then. Despite the applicant having spent more than two years in custody, the matter is still at the stage of examination of prosecution witnesses and only two out of the listed fifteen prosecution witnesses have been examined till now.

19. 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

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)

20. 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 a considerable amount of time.

21. 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)

22. 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 precedence over the statutory restrictions under Section 37 of the NDPS Act.

23. It cannot be denied that the applicant has already spent substantial period in custody and the trial is unlikely to conclude in the near future. 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. delay in the completion of the trial.

24. Although it is contended that the applicant has other criminal involvements, however, none of his other antecedents relate to offences under the NDPS Act.

25. The applicant is, therefore, directed to be released on bail (if not in custody in any other case) 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 Delhi without the permission of the 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 to the concerned IO/SHO 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 and shall keep her mobile phone switched on at all times.
26. In the event of there being any FIR/DD entry/complaint lodged against the applicant, it would be open to the respondent to seek redressal by filing an application seeking cancellation of bail.
27. 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.
28. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

JULY 23, 2025

BAIL APPLN. 1895/2025

Page 7 of 7