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

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**BAIL APPLN. 2022/2025 & CRL.M.A. 16416/2025**

**AKHILESH**

.....Applicant

Through: Mr. Suraj Prakash Sharma  
and Mr. Bhavya Singh  
Thakran, Advocates.

versus

**THE STATE (NCT OF DELHI)**

.....Respondent

Through: Ms. Priyanka Dalal, APP  
for the State with ASI  
Virender Singh, PS Crime  
Branch.

**CORAM:**

**HON'BLE MR. JUSTICE AMIT MAHAJAN**

**ORDER**

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**08.10.2025**

1. The present application is filed by the applicant seeking regular bail in FIR No. 234/2023 dated 03.10.2023, registered at Police Station Crime Branch for the offences under Sections 20/25/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('**NDPS Act**').
2. Briefly stated, it is alleged that on 03.10.2023, a secret information was received that the applicant along with co-accused persons would be coming in car bearing No. DL-3CBL-2854 near Bhalaswa service road, Delhi carrying huge quantity of contraband.
3. It is alleged that after reaching the designated spot, the police apprehended the applicant along with two other co-accused persons namely Prakash and CCL N.
4. It is alleged that the police after conducting the search of



the said car, recovered 45 Kgs of *ganja* kept in 3 plastic *kattas* in a hidden cavity near the boot space of the car.

5. Subsequently, on 03.10.2023, the applicant along with the other co-accused persons were arrested in the present case.

6. The learned counsel for the applicant submits that the applicant is innocent and has been falsely implicated in the present case.

7. He submits that even though the alleged recovery happened in a public place, there are no independent witnesses and no endeavour was made by the prosecution to photograph or videotape the alleged recovery either.

8. He submits that the applicant was arrested on 03.10.2023 and has been in custody since then. He submits that out of 29 witnesses cited by the prosecution only 6 have been examined and the trial is not likely to conclude in the near future.

9. *Per contra*, the learned Additional Public Prosecutor for the State vehemently opposes the grant of any relief to the present 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.

10. She submits that the applicant is involved in another case bearing FIR No. 20/2023 registered at Police Station Noida Sector-39 under Sections 8/20 of the NDPS Act.

11. She consequently prays that the present application be dismissed.

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

13. 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.

14. 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.”*

15. It is the case of the prosecution that the applicant was apprehended and a recovery of 45 Kgs of *ganja* was made 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 in a public 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

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credibility of the evidence.

21. 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.

22. 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.

23. 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.”*

24. While the case involves a huge recovery of contraband, in the opinion of this Court, at this stage, in the absence of any independent corroboration to render credence to the recovery or any financial trail to link the applicant to the offence, there are reasonable grounds to doubt the credibility of the case of the prosecution against the applicant.



25. Moreover, in the present case, the applicant has been in custody since 03.10.2023. The prosecution has cited 29 witnesses and till date only 6 witnesses have been examined. There is no likelihood of the trial being completed in the near future.

26. 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 31<sup>st</sup> December 2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,069 lakhs in the country<sup>20</sup>. 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. State<sup>21</sup> 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”<sup>22</sup> (also see Donald Clemmer's ‘The Prison Community’ published in 1940<sup>23</sup>). 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)

27. 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.

28. 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)

29. 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.

30. It was pointed out by the learned Additional Public Prosecutor for the State that the applicant has one more case pending against him being FIR No. 20/2023 registered at Police Station Noida Sector-39 under Sections 20/29 of the NDPS Act.

31. The Hon'ble Apex Court in the case of ***Prabhakar Tewari v. State of U.P., (2020) 11 SCC 648*** had observed that mere pendency of criminal cases against the accused cannot itself be the basis for refusal of bail. Undisputedly, accused being involved in multiple case is a relevant factor to be kept in mind while considering an application for bail. However, the same cannot a sole basis for refusal of prayer of bail where the applicant is otherwise entitled to on the facts of the case.

32. It is pointed out that the quantity of contraband allegedly recovered from the applicant in the other FIR was intermediate and the applicant has already been admitted on bail in the said case. Therefore, in the opinion of this Court, the applicant's involvement in the said case cannot be the reason for rejecting the prayer of bail of the applicant, especially when the applicant has been in custody for more than two years.

33. The aspect of the applicant's long period of incarceration and delay in trial cannot be outweighed at this stage.

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



35. In view of the aforesaid discussion, 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 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 informing the concerned IO/SHO;
- 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.

36. 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.

37. 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.

38. The bail application is allowed in the aforementioned



terms. Pending application(s), if any, also stand disposed of.

**AMIT MAHAJAN, J**

**OCTOBER 8, 2025**

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