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

+ **BAIL APPLN. 2025/2025 & CRL.M.A. 16428/2025**

CHHERING @ CHARANG

.....Applicant

Through: Mr. Aditya Aggarwal, Mr.
Naveen Panwar and Ms.
Kajol Garg, Advocates.

versus

STATE NCT OF DELHI

.....Respondent

Through: Ms. Richa Dhawan, APP
for the State with ASI
Sachin Singh, PS
ARSC/Crime Branch.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

04.08.2025

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1. The present application is filed seeking regular bail in FIR No. 205/2019 dated 16.07.2019, registered at Police Station Crime Branch, for the offence under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('**NDPS Act**').
2. Briefly stated, it is alleged that on 15.07.2019, a secret information was received that co-accused Karan Khanna would be coming to deliver the contraband to someone in front of Tivoli Garden, Main Road, Chatarpur, Delhi.
3. It is alleged that after reaching the designated spot, the informer pointed towards co-accused Karan Khanna, whereafter, he was apprehended.
4. It is alleged that a recovery of 1.2 Kgs of *charas* along with one gram of *ganja* and a THC Shatter was recovered from the bag of the co-accused Karan Khanna.



5. It is alleged that co-accused Karan Khanna in his disclosure statement stated that on 01.07.2019, he had taken delivery of 2 Kgs of *charas* from the applicant on instructions of his brother Siddhant Khanna.

6. It is alleged that the applicant during the course of investigation was evading his arrest, whereafter, proceedings under Section 82 of the Code of Criminal Procedure, 1973 ('CrPC') had been initiated against him by the learned Trial Court.

7. Thereafter, the learned Trial Court *vide* order dated 26.05.2022 declared the applicant as a Proclaimed person and Section 174A of the IPC was invoked against him.

8. Subsequently, the applicant was arrested in the present case on 21.01.2023.

9. The learned counsel for the applicant submits that the applicant has been falsely implicated in the present case.

10. He submits that the applicant was arrested on the basis of the disclosure statement of the co-accused Karan Khanna and that no recovery had been effectuated from the present applicant.

11. He submits that co-accused Karan Khanna from whom the recovery was made has been enlarged on bail by the Hon'ble Apex Court by order dated 15.05.2025. He submits that co-accused Siddhant Khanna was also granted bail by the learned Trial Court *vide* order dated 10.10.2022.

12. He further submits that the applicant was arrested on 21.01.2023 and the charges have been framed in the present case. He submits that there are 17 prosecution witnesses and the trial is likely to take a long time.

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

14. She submits that the applicant has two more cases pending against him being FIR No. 311/2019 under Sections 20/29 of the NDPS Act and FIR No. 135/2012 under Section 379 of the Indian Penal Code, 1860 ('IPC') and Sections 32/33 of the Indian Forest Act, 1927.

15. She further submits that the applicant was declared as a Proclaimed person by the learned Trial Court by order dated 26.05.2022 and is a flight risk.

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

17. 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 the 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 witness being threatened; etc.

18. *Prima facie*, the applicant has been implicated in the present case primarily on the basis of the disclosure statement of the co-accused Karan Khanna. It is relevant to note that while the veracity of the disclosure statement of the co-accused is to be tested at the time of the trial, this Court cannot lose sight of the decision of the Hon'ble Supreme Court in ***Tofan Singh v. State of Tamil Nadu*** (*supra*), wherein it was held that a disclosure
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statement made under Section 67 of the NDPS Act is impermissible as evidence without corroboration. The relevant paragraphs of the said judgment is set out below:-

“155. Thus, to arrive at the conclusion that a confessional statement made before an officer designated under Section 42 or Section 53 can be the basis to convict a person under the NDPS Act, without any non obstante clause doing away with Section 25 of the Evidence Act, and without any safeguards, would be a direct infringement of the constitutional guarantees contained in Articles 14, 20(3) and 21 of the Constitution of India.

156. The judgment in Kanhaiyalal then goes on to follow Raj Kumar Karwal in paras 44 and 45. For the reasons stated by us hereinabove, both these judgments do not state the law correctly, and are thus overruled by us. Other judgments that expressly refer to and rely upon these judgments, or upon the principles laid down by these judgments, also stand overruled for the reasons given by us.

157. On the other hand, for the reasons given by us in this judgment, the judgments in Noor Aga and Nirmal Singh Pehlwan v. Inspector, Customs are correct in law. 158. We answer the reference by stating: 158.1. That the officers who are invested with powers under Section 53 of the NDPS Act are “police officers” within the meaning of Section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of Section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.

158.2. That a statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.”

(emphasis supplied)

19. A Coordinate Bench of this Court in ***Phundreimayum Yas Khan Vs. State (GNCT of Delhi)*** : 2023 SCC OnLine Del 135, has held that when there is no material to link the applicant with the recovery of the commercial quantity from the co-accused persons, the rigors of Section 37 would not apply. It was further held that the disclosure statement of co-accused is per se not admissible without there being any corroboration.

20. It is pertinent to note that no recovery has been effectuated



from the applicant in the present case. It is alleged that there are certain WhatsApp chats and CDR that show the connectivity between the present applicant and the co-accused persons.

21. This Court, in the case of ***Dalip Singh v. State (NCT of Delhi)*** : 2019 SCC OnLine Del 6494, had observed as under:

11. On perusal of the record, it is prima facie seen that there are two major missing links in the case of the prosecution. There is no link established by the prosecution between the petitioner with the alleged supplier Manoj. Further the entire case of the prosecution, in so far as petitioner is concerned is circumstantial i.e. based solely on disclosure statement of a co-accused which is per se not admissible without there being any corroboration. Prosecution has not been able to establish any connection between the subject offence and the bank accounts, where the petitioner is alleged to have been depositing money or with the holders of those accounts. Merely because the petitioner has been having telephonic conversation with the co-accused, would not be sufficient to hold that petitioner is guilty of the subject offence. There is no recovery made from the petitioner.

12. I am of the view that requirement of Section 37 of the NDPS Act are satisfied. In so far as the petitioner is concerned, there are reasonable grounds to believe that petitioner is not guilty of the said offence.

(emphasis supplied)

22. Merely because the applicant was in regular touch with the co-accused Karan Khanna and Siddhant Khanna, the same is not sufficient to *prima facie* attract the bar of Section 37 of the NDPS Act.

23. 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.

24. In the present case, the learned Trial Court *vide* order dated 08.05.2025 framed charges against the applicant under Section 29 of the NDPS Act. The prosecution has cited 17



witnesses to be examined in the present case. The applicant has been in custody since 21.01.2023. There is no likelihood of the trial being completed in the near future.

25. 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)

26. 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.

27. 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)

28. 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.

29. It is not disputed that co-accused Siddhant Khanna and Karan Khanna have been enlarged on bail. Co-accused Karan Khanna from whom the alleged recovery was effectuated from has been granted bail by the Hon'ble Apex Court *vide* order dated 15.05.2025.

30. Co-accused Siddhant Khanna has been granted bail by the learned Trial Court *vide* order dated 10.10.2022. The role of the present applicant at this stage is not alleged to be graver than that of the co-accused persons.

31. It was pointed out that the applicant had been declared as a Proclaimed person by order dated 26.05.2022 and is under the apprehension of flight risk.

32. It is pertinent to note that the Hon'ble Apex Court while granting bail to co-accused Karan Khanna, noted that he was absconding before his arrest and directed the learned Trial Court to impose stringent conditions in order to ensure his appearance for the trial.

33. Therefore, in view of this Court, the aforesaid apprehension can be allayed by imposing appropriate conditions on the applicant.

34. It was further pointed out that the applicant has two more case pending against him being FIR No. 311/2019 under Sections 20/29 of the NDPS Act and FIR No. 135/2012 under Section 379 of the IPC and Sections 32/33 of the Indian Forest Act, 1927 and
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there is a likely hood of him committing an offence whilst on bail.

35. 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.

36. The only evidence against the applicant at this stage is the disclosure statement of the co-accused and the CDR connectivity. However, such evidence as noted above is not sufficient at this stage to attract the bar of Section 37 of the NDPS Act specially when the accused has already spent substantial period in custody.

37. The applicant in the present case has been in custody for more than two years and has suffered long period of incarceration. Further, all other co-accused persons have been enlarged on bail.

38. Therefore, in the opinion of this Court, the applicant has *prima facie* established a case for grant of bail and he is entitled to the same on the ground of parity.

39. In view of the above, 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. He 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. He shall under no circumstance leave the boundaries of the country without informing the concerned IO/SHO;
- c. He shall appear before the learned Trial Court as and when directed;
- d. He 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. He shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.

40. 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.

41. 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.

42. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

AUGUST 4, 2025