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

+ **BAIL APPLN. 2169/2025**

DILIP KUMAR MISHRA

.....Petitioner

Through: Mr.Suraj Prakash Sharma, Advocate

versus

THE STATE NCT OF DELHI

.....Respondent

Through: Ms.Richa Dhawan, APP for State
with SI Pinki Rani, NR-I, Crime
Branch.

CORAM:

HON'BLE MR. JUSTICE ARUN MONGA

ORDER

19.09.2025

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1. The applicant herein seeks indulgence of this Court for grant of regular bail during pendency of the trial in the criminal proceedings arising out of FIR No. 117/2023 dated 17.05.2023 for the offences punishable under Sections 15, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act), registered at Police Station Crime Branch, Delhi.
2. Applicant was arrested on 17.05.2023 and has been under incarceration for more than 2 years and 4 months. His earlier bail application was dismissed by the learned ASJ/ Special Judge *vide* order dated 16.12.2024.
3. Briefly stated, as per the FIR, on 17.05.2022, information was received from a security guard regarding co-accused/ Neeraj, who, along with co-accused/ Naresh Kumar Gupta and the applicant, was engaged in



procuring large quantities of Doda poppy straw from Lal Soth, Rajasthan, and supplying the same, both wholesale and retail, in Delhi and Ghaziabad, using a white Swift Dzire car belonging to a relative of co-accused/ Neeraj.

3.1 Acting upon the said information, the police noticed co-accused/ Naresh and the applicant near Bhalswa Lake in the aforesaid Swift Dzire, in possession of the contraband, while awaiting the arrival of co-accused Neeraj. Thereafter, a raid was accordingly organized, and vehicles were strategically positioned to intercept the suspects. Both co-accused/ Naresh and the applicant were apprehended, duly identified, and informed of their legal rights under Section 50 of the NDPS Act. Co-accused/ Naresh voluntarily waived his rights, along with the applicant.

3.2 Upon their personal search, no contraband was recovered from either of them. Thereafter, the Swift Dzire was searched, which resulted in the recovery of three white bags containing greenish-brown Doda poppy straw. Each bag was weighed separately, and the total quantity was found to be 55 kg. Consequently, the present FIR was registered, and investigation ensued.

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

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

5.1 That the applicant has clean and clear antecedents and has never been convicted in any case by any court of law. There is no basis for the allegations made against the applicant, which are totally false and frivolous in nature. No contraband has been recovered from his conscious possession, and Section 29 of the NDPS Act is not attracted towards him.



5.2 That the co-accused/ Neeraj has already been granted bail *vide* order dated 26.11.2024 by the High Court of Delhi, and the role of the applicant is similar to that of the said co-accused. Further, the custodial interrogation of the applicant is already over, and he is no longer required for any such purpose. He would contend that the investigation in the matter stands concluded, charge sheet has already been filed, and thus no fruitful purpose would be served by keeping him in judicial custody.

5.3 That the applicant has been in judicial custody since 17.05.2023. It is well settled by the Supreme Court in ***State of Rajasthan v. Balchand*** that bail is the rule and incarceration is an exception, being rooted in the fundamental right to personal liberty under Article 21 of the Constitution of India. The object of jail is to secure the appearance of persons during trial, and it is neither punitive nor preventive. Deprivation of liberty without proof of guilt amounts to punishment without trial.

5.4 That the Supreme Court in ***Mohd. Muslim v. State (NCT of Delhi), 2023 SCC OnLine SC 352*** has categorically observed that the conditions under Section 37 NDPS Act must be interpreted within constitutional parameters. Courts are to form a *prima facie* satisfaction from the record that the accused may not be guilty, and meticulous examination of evidence is not required at the stage of bail. He would also argue that the Court has further held that undue delay in trial can be a ground for bail notwithstanding Section 37, keeping in view the mandate of Section 436A CrPC.

5.5 That this aspect has been more recently reiterated in ***Javed Gulam Nabi Shaikh v. State of Maharashtra & Anr., CRLA 2787/2024***, decided on 3rd July 2024, where the Supreme Court emphasized that an accused is



still only an accused, not a convict, and the presumption of innocence until proven guilty cannot be lightly brushed aside, no matter how stringent the penal law may be.

5.6 That the applicant had moved an application before the Court of District and Sessions Judge, Rohini Courts, Delhi, which was dismissed on 16.12.2024. He would urge that the applicant, belonging to a poor family, remains in judicial custody, which is likely to hamper his entire future and adversely affect the reputation of his family without any commission of offence on his part.

6. The learned APP for the State, opposing the application, submits that it is *sans* merit and the applicant is not entitled to bail at this stage. She would further submit that a total of 55 kgs of Doda Post (Poppy Straw) was recovered from the applicant and his co-accused Naresh Kumar Gupta in Swift Dzire Car. It is also urged that the CDR connectivity establishes links between the applicant, co-accused Naresh Kumar Gupta, and co-accused/receiver Neeraj Kumar Sharma.

6.1 She would further submit that location of the applicant was traced to Deoli, Tonk, Rajasthan, from where he, along with co-accused/ Naresh Kumar Gupta, had procured the Doda Post from source Shanker Lal Dhakar, which was subsequently recovered from their possession in the said vehicle. She would thus submit that the instant application of the applicant deserves to be dismissed.

6.2 She would further submit that there is a strong likelihood that if released, the Applicant may re-offend or tamper with evidence. In NDPS matters, the presumption is against bail, and the gravity of the offence itself is a sufficient ground to decline relief. Hence, the bail application deserves



dismissal.

7. Having heard, *prima facie*, I find that certain submissions made on merits by the learned counsel for the applicant do carry some weight, though these are ultimately issues to be adjudicated at trial. Nonetheless, having regard to the overall circumstances, I am of the considered view that this is a case for grant of bail at this stage. Let us see how.

8. The applicant, in custody since 17.05.2023, is also entitled to parity with co-accused Neeraj who has already been granted bail. His custodial interrogation is over, the investigation is complete, and the charge sheet filed. Twin conditions under Section 37 NDPS Act have to read in light of constitutional safeguards and the delay in trial can itself be a ground for bail under Section 436A CrPC.

9. The applicant has already remained in custody for more than 2 years and 4 months. The trial is moving at a snail's pace and further continued incarceration would cause undue hardship to applicant's family and serve no useful purpose, especially when the trial is not likely to conclude in the near future as it violates the fundamental rule i.e. bail is the rule and jail an exception.

10. Non-compliance with Sections 41 and 42 of the NDPS Act, as no written authorization, warrant, or proper recording of secret information has been produced, casts a shadow on the prosecution case. The alleged recovery at a busy public place without videography or photography. Same may not be sine qua non, but it undermines the fairness and reliability of the proceedings. Crucial evidence, such as location data of the date of the incident has not been gathered, which reflects weakness of the investigation.

11. One of the primary objects of bail is merely to secure the presence of



the accused during trial. The applicant statedly has deep roots in the society and has an unblemished record with no prior criminal involvements in NDPS, hence poses no flight risk.

12. Further, as per the nominal roll, the applicant was on interim bail from 17.05.2024 to 30.05.2024 during which no misconduct was reported, coupled with the fact that the co-accused persons- Neeraj and Shankar have been granted bail *vide* order dated 26.11.2024 and 07.08.2024 respectively passed by Co-ordinate bench of this Court thus, I am of the view that the applicant deserves concession of bail on the ground of parity given that the role of the applicant is similar to that of the said co-accused and the applicant's satisfactory conduct in jail.

13. Apart from the parity, it is borne out that the role attributed to the Applicant is on lesser footing, since the case set up by the prosecution is that Shankar and Neeraj (co-accused persons) were the supplier of the contraband and the applicant herein was merely a carrier, if at all.

14. As regards the apprehension of influencing or intimidating the witnesses and tampering with evidence, there is nothing on record to support such apprehension, and it is pertinent to note that the material evidence has already been seized and is securely in the custody of the prosecution, rendering such apprehension illusory. One of the primary objects of bail is to secure the presence of the accused during trial. The applicant has no criminal antecedents, poses no flight risk, and continued detention may amount to punishment before conviction, at this stage.

15. As an upshot and taking a wholesome view of the matter, 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/Duty Court.

16. 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.

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

ARUN MONGA, J

SEPTEMBER 19, 2025/SV