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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 2601/2025**
SANTA BAHADUR TAMANGPetitioner

Through: Mr. Rahul D. Tyagi, Mr. Jatin,
Mr. Akshat Shandilya, Mr. Gourav
Singh, Mr. Pranab Tyagi, Ms. Sangeeta
Tyagi, Mr. Tarun N. Tyagi,
Mr. Nakshatra Shandaliya, Mr. Ritesh
Kain Mr. Rajat Kain, Mr. Narender
Kumar and Mr. Amit Kumar Meena,
Advocates.

versus

THE STATE GOVT. OF NCT OF DELHIRespondent
Through: Mr. Utkarsh, APP.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

% **01.09.2025**

1. First Bail Application under Section 483 of the Bharatiya Nagrik Suraksha Sanhita, 2023 ("BNSS") has been filed on behalf of the Applicant Santa Bahadur Tamang for grant of Regular Bail in FIR No.0391/2025 under Section 20 NDPS Act, registered at PS: Kashmeri Gate.
2. It is submitted that Bail Application filed on behalf of the Applicant seeking Regular Bail, was dismissed by the learned Special Judge, Delhi vide Order dated 05.07.2025.
3. It is asserted that he has been falsely implicated in the present case. He was arrested by the Police officials on 20.05.2025. The present case was lodged on the Complaint filed by Police official Head Constable Naresh Kumar, about alleged recovery of contraband from his possession. According to the said Police official, he had spotted a suspicious person, who was carrying a yellow colored can in his hand. He stopped him and upon enquiry



about what he was carrying in that can, he was unable to provide any satisfactory answer. The Complainant checked the can and found it to contain 12 Yellow colored packets. Those packets were checked with Drug Detecting Kit and each packet was found to be containing narcotics drug “Charas”. The case FIR No.0391/2025 was registered under Section 20 NDPS Act at PS: Kashmeri Gate and packets were handed over to the concerned IO. The Appellant was kept in Police custody for four days and thereafter, was remanded to judicial custody.

4. The Bail is sought on the ground that the Applicant has been falsely implicated in this case and true spirit of Section 50 NDPS Act has not been complied with. Reliance has been placed on Mohd. Jabir Vs. State (NCT of Delhi).

5. It is further claimed that the samples drawn by the Police officials were defective and were not in compliance of standing Order 1/88 dated 15.03.1988. Reliance has been placed on judgments passed by this Court in BAIL APPLN.253/2023 titled as Kashif vs. NCB, decided on 18.05.2023 and BAIL APPLN.3149/2022 titled as Vinod Nagar vs. NCB, decided on 19.02.2024.

6. It is claimed that DD No.12 is stated to have been lodged after alleged recovery of contraband and subsequently, FIR has been registered. It is evident that a wrong Report with contrary facts, had been given. There was no independent witness, who joined the investigation, despite the apprehension from crowded place, i.e. Bus Stand, Kashmere Gate, Delhi. There is no clarification, if any CCTV footage had been taken by the Police. Police official has failed to cite any independent witness to support the allegations against the Petitioner.



7. Reliance has been placed judgment passed by this Court in the case of Krishan vs. State (NCT of Delhi) 2023 and Vikas vs. State (NCT of Delhi) 2024.
8. There is non-compliance of Section 52A NDPS Act and no explanation has been given by the IO for non-compliance of the same. The search and seizure had not been conducted as per the mandatory provisions under Section 105 of B.N.S.S., 2023.
9. Electronic evidence has also not been placed on record in support of the allegations. There is no compliance of Section 55 of NDPS Act. There was no videography or photography done at the time of alleged recovery. Further, presumption of Section 54 NDPS Act cannot be read against the Applicant under the facts and circumstances of this case, due to non-compliance of any of the provisions of NDPS Act, while affecting recovery.
10. Further, reliance is placed on judgment dated 13.07.2023 passed by the Apex Court in SLP(CRL)No.4169/202 titled as Rabi Prakash vs. the State of Odisha; and Satender Kumar Antil vs. Central Bureau & Anr. (2022) 10 SCC 51.
11. It is further stated that Section 37 of NDPS Act prescribes two conditions to be satisfied for any person to be released on bail. IO has completely failed to collect any evidence against the Applicant to link him with commission of offence. Ingredients of Section 20 of NDPS Act cannot be read as a *prima facie* against the Applicant. There is no abetment and criminal conspiracy that can be attributed to him.
12. The investigations are already complete and his custodial interrogation has already been done by the IO. The evidence in the present case are technical and documentary in nature. There is no apprehension of the



Applicant influencing the witnesses or tampering with the evidences. The Applicant has not shown as a financial beneficiary from the alleged commission of offence. There is no active participation or design of illegal trafficking of the contraband.

13. Reliance is placed on judgment passed by Apex Court in SLP(CRL)No.5703/2021 titled as Bharat Chaudhary vs. Union of India and Others; SLP(CRL)No.1570/2021 titled as Mahmood Kurdeya vs. Narcotics Control Bureau; SLP(CRL)No.9816/2017 titled as Surender Kumar Khanna vs. Intelligence Officer Directorate of Revenue Intelligence; Ranjit Singh Brahmajeet Singh vs. State of Maharashtra and Anr. (2005) 5 SCC 294.

14. It is therefore, submitted that the Applicant be granted bail.

15. **Status Report** along with other documents filed on behalf of the State is taken on record, wherein it is submitted that while patrolling, Head-Constable Naresh and Constable Dharmender had apprehended the Applicant, since he was looking suspicious and 12 yellow colored packets were recovered from him, which were found to be containing *Charas* weighing about 5,961 grams, which is commercial quantity.

16. It was revealed during his interrogation that he procured these drugs from one Ratan who is resident of Nepal and he was going to deliver the same to one of his friend namely 'Vikas'. However, no such person in the name of Vikas could be traced.

17. As per the CDR, one person Namraj Thapa S/o Toran Bahadur Thapa R/o Bakshunath, Himachal Pradesh was apprehended and interrogated. The Search for Ratan is still being conducted, though he could not be traced. The contraband has been sent to FSL and the Result is awaited.

18. **Bail is opposed on the ground** that the quantity recovered is



commercial quantity and rigorous of Section 37 NDPS Act would have a strong bearing. There is likelihood that the Applicant may jump the bail and can also indulge in the same offence, if granted bail.

19. Learned APP for the State also submitted some documents to show that the Applicant stands convicted by learned District and Sessions Judge, Karwar, Uttarakannada District, Karnataka under Section 8(c) and 20(b)(ii)C of NDPS Act. Bail is therefore, opposed.

Submissions heard and record perused.

20. It is the case of the prosecution that while Police officials were on patrolling duty, they apprehended the Applicant as he was found to be roaming in suspicious circumstances. The recovery of 5,961 grams *Charas* was made from 12 packets, which he was carrying in the yellow can. It cannot be said at this stage that there is false implication of the Applicant.

21. Learned counsel for the Applicant has asserted that there was no compliance of Section 50 of NDPS Act in true spirit and in which the paper work has been done. Also, no videography of the recovery was affected nor any public witness was joined. However, these are procedural aspect, which are to be tested on the handle of evidence.

22. The Apex Court in Narcotics Control Bureau v. Kashif, (2024) 11 SCC 372, has observed as under;

“50.5. Any procedural irregularity or illegality found to have been committed in conducting the search and seizure during the course of investigation or thereafter, would by itself not make the entire evidence collected during the course of investigation, inadmissible. The court would have to consider all the circumstances and find out whether any serious prejudice has been caused to the accused.”



23. The Division Bench in the case of State of Karnataka vs. Sri Darshan, etc., CrI. Appeal Nos. 3582-3532 / 2025 decided on 14.08.2025; wherein the Apex Court has held that a procedural lapse does not by itself, justify the grant of Bail in cases involving serious offences.

24. The Applicant has raised various contentions which cannot be considered at this stage and can be appropriately appreciated during the trial. A huge amount of *Charas* was recovered from the Applicant and though Chargesheet has already been filed but Charges are yet to be framed.

25. The Applicant is in judicial custody since 20.05.2025. Considering the gravity of the offence and that trial is yet to commence, it is not considered appropriate to grant bail to the Application.

26. Bail Application along with pending Application is dismissed.

NEENA BANSAL KRISHNA, J.

SEPTEMBER 01, 2025/R