



\$~2

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 3182/2024**
MUSTAFAPetitioner

Through: Mr. Vishal Raj Sehejpal, Mr.
Purushendra Bhardwaj and Ms.
Priyanka Handa, Advocates.

versus

STATE OF NCT OF DELHIRespondent

Through: Mr. Amit Ahlawat, APP.
SI Umesh Pal, District Line North
West and ASI Dinesh Kumar,
Narcotics North West.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

% **ORDER**
09.04.2025

CRL.M.(BAIL) 666/2025 (seeking release of Petitioner on interim bail)

1. Counsel for Applicant states that he has instructions to withdraw the present application.

2. Dismissed as withdrawn.

BAIL APPLN. 3182/2024

3. The present application under Section 439 of the Code of Criminal Procedure, 1973¹ read with Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985², seeks regular bail in FIR No. 665/2023

¹ "Cr.P.C."

² "NDPS"



under Section 21, 61 and 85 of NDPS Act, registered at P.S. Jahangir Puri, Delhi. Subsequently, a chargesheet has also been filed *qua* the Applicant under Sections 21, 61 and 85 of NDPS.

4. The case of the prosecution is as follows:

4.1. On the basis of secret information, a raiding team was constituted under the directions of concerned ACP. In the early hours of 6th October, 2023, the Applicant – Mustafa was apprehended on the road near Mangal Bazar Chowk to Kushal Chowk, Jahagirpuri, Delhi. Before the raid, efforts were made to secure independent witnesses, however, passersby declined to join the proceedings, citing legitimate reasons and left without disclosing their names. Upon apprehension, the Applicant disclosed that he was carrying a package containing 260 grams of heroin intended for delivery to an individual named Farid.

4.2 The Applicant was informed of his right under Section 50 of the NDPS Act to be searched in the presence of a Magistrate or a Gazetted Officer. He declined this option in writing.

4.3 Thereafter, a white plastic foil containing a light brown powdery substance was recovered from his right hand. The substance tested positive for heroin using a field-testing kit and weighed 260 grams including packaging. The contraband was seized and sealed with a seal bearing “SK” and the same was taken into police custody as per seizure memo.

4.4 The present FIR was registered against the Applicant in P.S. Jahangir Puri, on the statement made by ASI, Narcotics Squad. Further, the seized contraband was deposited in the Malkhana of P.S. Jahangir Puri, Delhi and further investigation in the case was entrusted to SI Umesh Pal.

4.5 The Applicant was arrested on the same day – i.e., 6th October, 2023.



On 11th October, 2023 proceedings under Section 52A of the NDPS Act were conducted before the Magistrate and two samples being 'A-1' & 'A-2' were drawn from the seized packet. These samples were then sent to the FSL Rohini for examination on 27th October, 2023, where they tested positive for smack/heroin. During investigation, all the mandatory compliances under the NDPS Act were duly complied with.

4.6 Upon completion of investigation, a chargesheet was filed against the Applicant, before the Court of ASJ, Special NDPS Judge, North District, Rohini Courts and the trial is ongoing. The second regular bail application of the Applicant was dismissed by the Trial Court on 13th May 2024.

5. Counsel for the Applicant urges the following grounds for seeking bail:

5.1. The Applicant, a law-abiding citizen, with no criminal antecedents has been falsely implicated. The investigation carried out by the police is riddled with discrepancies. The documents and evidence relied upon by the prosecution suffers from serious procedural irregularities and inconsistencies, including contradictions in the case record and discrepancies in witness statements.

5.2. The Applicant specifically and vehemently denies possession of the alleged contraband and alleges that the recovery was planted by the police in order to fabricate a case and artificially bolster conviction statistics.

5.3. There has been non-compliance with the mandatory safeguards prescribed under Sections 50 and 52A of the NDPS Act, which strikes at the heart of the prosecution's case. The non-compliance of these provisions renders the recover proceedings illegal. Reliance in this regard, is placed on



Dilip v. State of Madhya Pradesh³, State of Rajasthan v. Parmanand⁴, Arif Khan @ Agha Khan v. State of Uttarakhand⁵ and Gurbax Singh v. State of Haryana⁶.

5.4. There is significant delay in initiating proceedings under Section 52A. Though the recovery was made on 6th October, 2023, the proceedings before the Magistrate were conducted on 11th October, 2023 – i.e., approximately 5-6 days after the alleged recovery of contraband. Further, the sealed samples were dispatched to the Forensic Science Laboratory only on 27th October, 2023 – i.e., 16 days thereafter. This substantial delay constitutes gross non-compliance with Section 52A of the NDPS Act as well as the Standing Order No. 1/88 dated 15th March, 1988 regarding sampling of narcotics and psychotropic substances under the NDPS Act, thereby compromising the integrity of the sampling process.

5.5. Furthermore, even though the recovery was made in a public place, yet no independent witnesses were secured, thereby casting doubts on the authenticity of the recovery.

5.6. The recovery of contraband is allegedly 260 grams of heroin which is marginally above the commercial quantity threshold of 250 grams. It is submitted that this weight includes the foil and rubber band, and no effort was made to isolate the net weight of the substance, thereby inflating the recovery artificially.

5.7. The Applicant is the sole breadwinner of his family, which includes his aged parents, wife and two minor children. He has been in custody since

³ (2007) 1 SCC 450

⁴ AIR 2014 SC 1384

⁵ 2018 SCC OnLine SC 459

⁶ (2001) 3 SCC 28



6th October, 2023 and his continued detention is causing extreme hardships on his dependents. Moreover, the Applicant himself has a history of chronic health issues, including hypertension and diabetes which require regular medical attention. His health has deteriorated significantly while in custody due to inadequate medical care. As such, the Applicant's detention is violative of his fundamental rights under Articles 14, 19 and 21 of the Constitution of India.

5.8. The investigation is complete, the chargesheet has been filed, and all relevant evidence has already been collected. In the absence of any allegation of tampering or flight risk, further incarceration is unnecessary.

6. On the other hand, Mr. Amit Ahlawat, APP strongly opposes the bail application on the grounds that the contraband recovered in the present case (260 grams of heroin), exceeds the statutory threshold for commercial quantity as defined under the NDPS Act. As a result, he submits, the rigours of Section 37 are squarely attracted, and no case has been made out to satisfy either of the twin conditions for the grant of bail. In response to the Applicant's contentions regarding procedural lapses, specifically the delay under Section 52A and the absence of independent witnesses, Mr. Ahlawat relies on the judgment of the Supreme Court in the case of **NCB v. Kashif** to contend that not every procedural lapse amounts to an illegality. He submits that procedural irregularities, if any, may be addressed during trial and do not *ipso facto* vitiate the recovery or the case against the accused. He further argues that the period of custody undergone by the Applicant is not, by itself, a ground for bail in a case involving a commercial quantity of narcotic substance, particularly when the trial is in progress and material



witnesses remain to be examined.

7. The Court has considered the contentions of the Applicant but remains unpersuaded. The recovery of contraband in the present case is 260 grams of heroin, which is 10 grams above the commercial quantity threshold of 250 grams prescribed under the NDPS Act. The argument that the weight includes packaging material such as foil and rubber band is speculative and unconvincing. There is nothing on record to suggest that the packaging contributed so significantly to the total weight as to bring the quantity below the statutory limit. The fact that the recovered quantity exceeds the commercial threshold by a narrow margin is immaterial. Once the recovery crosses the defined limit, however marginally, the statutory embargo under Section 37 stands triggered in full force. The Applicant must therefore satisfy the stringent twin conditions of Section 37 of the NDPS Act – i.e., (i) that there are reasonable grounds to believe that he is not guilty of the alleged offence, and (ii) that he is not likely to commit any offence if released on bail.

8. The recovery was affected directly from the hand of the Applicant. While it is true that no independent witness was available at the scene, the record reflects that the procedural safeguards mandated by the NDPS Act were observed. A notice under Section 50 was served upon the Applicant, who, in writing, waived his right to be searched before a Magistrate or Gazetted Officer. This waiver is duly recorded and signed. The Court finds no basis to conclude, at this stage, that the Applicant is not guilty of the alleged offence. Accordingly, the first statutory condition under Section 37(1)(b)(i) remains unsatisfied.

⁷ 2024 SCC OnLine SC 3848



9. As regards the contention regarding non-compliance of Section 52A of the NDPS Act is concerned, the Court finds *prima facie* merit in the submission of Mr. Ahlawat that the alleged non-compliance of the section in terms of the purported delay in sampling does not vitiate the recovery process. Nonetheless, the question of whether there was substantial non-compliance or not is a matter to be determined during trial and not in the present bail proceedings.

10. The Court notes that the Applicant has remained in judicial custody since 6th October 2023 and has thus spent over one year and five months in detention. While the duration of custody is not insignificant, it is not, in the present circumstances, sufficient to override the statutory restrictions under Section 37 of the NDPS Act or to independently invoke the protection of Article 21 of the Constitution as a ground for bail. The jurisprudence on this issue recognises that prolonged incarceration may, in appropriate cases, weigh in favour of granting bail, particularly where trial is unlikely to conclude within a reasonable time. However, such relief cannot be granted mechanically and must be assessed in light of the gravity of the offence and the progress of proceedings.

11. In the present case, the investigation stands concluded, the chargesheet has been filed, and the trial is ongoing. The Court is therefore required to maintain a careful balance between the Applicant's right to personal liberty and the broader societal interest in the effective prosecution of serious narcotic offences.

12. Therefore, in light of the above, the Court is not persuaded to enlarge the Applicant on bail. Dismissed.

13. 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 should also not be taken as an expression of opinion on the merits of the case.

SANJEEV NARULA, J

APRIL 9, 2025

as