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

+ **BAIL APPLN. 3824/2025 & CRL.M.A. 29845/2025**

SONU SHARMA

.....Applicant

Through: Mr. Ajay Kaushik, Mr.
Digvejender Sharma and
Ms. Ananya Bhardwaj,
Advs.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Ritesh Kumar Bahri,
APP for the State with SI
Rohit, ANTF / Crime
Branch.

+ **BAIL APPLN. 3825/2025 & CRL.M.A. 29856/2025**

CHANDAN KUMAR MEHTO

.....Applicant

Through: Mr. Pramod Kumar, Mr.
Avdhesh Kumar and Mr.
Rahul Singh, Advs.

versus

THE STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Ritesh Kumar Bahri,
APP for the State with SI
Rohit, ANTF / Crime
Branch.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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21.11.2025

1. The present applications are filed seeking regular bail in FIR No. 205/2023 dated 22.08.2023, registered at Police Station Crime Branch for offences punishable under Sections 20/22/25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS').

2. Succinctly stated, it is the case of the prosecution that on the basis of secret information, on 22.08.2023, at 12:25 AM one Sahil Sharma@Maxx was apprehended from his car bearing

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number *HR 10 AM 5324* Maruti Brezza Grey Colour and during search, 1200 grams Charas, 200 grams MDMA, 2580 grams Ganja/cannabis was recovered from him.

3. A case *vide* FIR no. 205/2023 dated 22.08.2023 u/s 20/22/25 NDPS Act was registered. During investigation, at the instance of main accused Sahil Sharma, 52 grams of MDMA@ecstasy was recovered from his flat 2408, Habitech, Panchtatva.

4. Upon the disclosure statement of main-accused/Sahil Sharma, the applicants herein, alleged to be the riders/drivers of the main accused, were arrested on 23.08.2023. Allegedly, 53 grams of Ganja and 1.87 grams of MDMA(*Amphetamine*) was recovered from the applicant/Sonu Sharma, while 54 grams of Ganja and 2 grams of MDMA(*Amphetamine*) was recovered from the applicant/Chandan Kumar Mehto.

5. The investigation stands completed and the chargesheet has been filed for offences under sections 20/22/25/29 of the NDPS Act, against the applicants and the other co-accused persons.

6. It has been urged on behalf of the applicants that they have been falsely implicated in the present case and there is no incriminating evidence against them, to link them with the case of the prosecution except for the disclosure statement of Sahil Sharma @ Maxx. It is further argued that nothing was recovered from the possession of the applicants and the contraband was planted upon them.

7. It is further argued 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. It is further argued that, in any event, there is only a recovery of 53 grams of ganja and 1.87 gms of MDMA(*Amphetamine*) from the applicant/Sonu Sharma which is a small quantity. Similarly, there is only recovery of 54 grams of ganja and 2 grams of MDMA(*Amphetamine*) from the applicant/Chandan which is again a small quantity. Therefore, the rigors of section 37 are not applicable to the facts of the present case.

9. It is further argued that the applicants have remained in custody for more than 2 years and their continued incarceration is neither warranted nor justified, since the trial is yet to begin and the conclusion of trial would take a long time.

10. *Per contra*, the learned Additional Public Prosecutor for the State vehemently opposes the grant of any relief to the applicants and submits that the allegations against the applicants are extremely serious and are supported by the recoveries of contraband. He submits that there is also recovery of packaging material of Flipkart, in which the accused used to pack the contraband and supply them to the customers of main accused Saahil Sharma @ Maxx. He consequently submits that the rigors of section 37 are fully applicable to the facts of the present case.

11. It is further urged that the charges have already been framed against the accused persons.

12. I have heard the learned counsel appearing 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 relevant to note that the case of the prosecution is essentially based upon the disclosure statement of the main accused and some unverified financial transactions between the applicants and the main accused to allege that the applicants were involved in illegal drug trafficking. It is relevant to note that while the veracity of the disclosure statement of the co-accused and the financial transactions is to be tested at the time of the trial, this Court cannot lose sight of the decision in the case of **Tofan Singh v. State of Tamil Nadu : (2021) 4 SCC 1**, where the Hon'ble Apex Court held that a disclosure statement made under Section 67 of the NDPS Act is impermissible as evidence without corroboration.

15. It has been further been argued by the learned counsel for the applicants that the bar under Section 37 of the NDPS Act would not be attracted in the present case as only small quantity of the contraband has been recovered from the applicants. On the other hand, the learned APP has contested that the rigours of Section 37 of the NDPS Act will be attracted as the total amount



of the recovered contraband is more than the threshold of commercial quantity.

16. *Prima facie*, at this stage, the contraband recovered from the main accused cannot be attributed to the applicant to attract the rigours of Section 37 of the NDPS Act.

17. It has not been disputed that the quantities allegedly recovered i.e. 53 grams of ganja and 1.87 grams of MDMA (*amphetamine*) from Sonu, and 54 grams of ganja and 2 grams of MDMA (*amphetamine*) from Chandan, constitute small quantities of contraband. Hence, the rigours of Section 37 of the NDPS Act would not be applicable in the present case.

18. There is no cavil that only because the bar under Section 37 of the NDPS Act is not attracted, the accused would be entitled for bail automatically. In such circumstances, the Court has to consider the parameters as enshrined in relation to grant of bail

19. It has further been urged that no independent witness was joined by the prosecution even though the applicants were apprehended at a public place, on the basis of disclosure by the main accused. It has also been argued that no photography or videography was done by the prosecution in the present case.

20. 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. 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 persons so as to falsely implicate him. The testimonies of the official witnesses cannot be disregarded merely on account of them being police officials.

21. 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.

22. 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 credibility of the evidence.

23. It is stated in the complaint that although 3-4 were asked to join investigation, however, they refused to join the same. 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 applicants, especially since they have already spent a substantial time in custody.

24. Much emphasis has been laid by the counsel for the applicants on the period spent by the applicants in custody. In the present case, the applicants were arrested on 23.08.2023. Despite the applicants having spent more than two years in custody, the



matter is still at the stage of prosecution evidence and no witness has yet been examined by the prosecution out of the list of 40 witnesses.

25. Though it has been argued that the applicants are not entitled to bail as the rigors of Section 37 of the NDPS Act are attracted against them, 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 udner :-

*“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, 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.”

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 the applicants have been in custody for more than two years and have undergone a long period of incarceration and the conclusion of trial is evidently going to take considerable time. It is also not disputed that the applicants have clean antecedents, and are thus, not likely to commit any offence whilst on bail.

30. Therefore, in the opinion of this Court, the applicants have *prima facie* established a case for grant of bail.

31. In view of the above, the applicants are directed to be released on bail on furnishing a personal bond for a sum of ₹25,000/- each with two sureties of the like amount, subject to the satisfaction of the learned Trial Court, on the following conditions:

- a. They 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. They shall under no circumstance leave the boundaries of the country without informing the concerned IO/SHO;
- c. They shall appear before the learned Trial Court as and when directed;
- d. They shall provide the addresses where they would be residing after their release and shall not change the given addresses without informing the concerned IO/SHO;
- e. They shall, upon their release, give their mobile numbers to the concerned IO/SHO and shall keep their mobile phones switched on at all times.

32. In the event of there being any FIR/ DD entry/ complaint lodged against the applicants, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

33. It is clarified that any observations made in the present order are for the purpose of deciding the present bail applications 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.

34. The bail applications are allowed in the aforementioned terms.

35. A copy of this order be placed in both the matters.

AMIT MAHAJAN, J

NOVEMBER 21, 2025

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