



\$~64

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

+ **CRL.M.C. 7369/2025, CRL.M.A. 30925/2025 &**
CRL.M.A. 30926/2025
STATE

.....Petitioner
Through: Mr. Aman Usman, APP
for the State.
Insp. Anuj Kumar, Crime
Branch.

versus

SHADAB BAHADURI

.....Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
16.10.2025

%

1. The present petition is filed challenging the order dated 29.07.2025 ('**impugned order**'), passed by the learned Trial Court in the case arising out of FIR No. 228/2023, registered at Police Station Crime Branch, whereby the respondent was admitted on bail.
2. Briefly stated, it is the case of the prosecution that on 24.09.2023, on the basis of secret information, the respondent was apprehended along with co-accused Alitumo near Amul Dairy, Amar Shaheed Babu Genu Marg and a recovery of 1006.50 g of Heroin was effected from him. A recovery of 706 g of Heroin approximately was effected from the possession of co-accused as well.
3. The bail application filed by the respondent was allowed by the impugned order, essentially on three grounds.



4. Firstly, it was noted that there appears to be material discrepancy in the color of the seized sample and the sample which was analysed by FSL. It was noted that as per the prosecution's case and seizure memo, brown coloured powdery substance was recovered from the respondent. It was further noted that while the learned Magistrate had not mentioned the color of the substance which was seized in the proceedings under Section 52A of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act'), however, the colour from the photographs shows the contraband to be of a light brown colour as well. It was noted that the exhibits which were analysed by the FSL however are mentioned to be cream coloured solid material. The learned Trial Court was weighed by the decision of the Hon'ble Bombay High Court in ***Abdul Kadar Shaikh v. UOI : 2024:BHC-AS:21218*** in this regard.

5. Secondly, it was found that no grounds of arrest were communicated to the accused which had rendered the arrest illegal.

6. Thirdly, the learned Trial Court held that non-joining of the public witnesses in spite of the fact that the recovery was made in a public place during busy hours and no videography or photography to support the recovery raises *prima facie* doubts on the prosecution's case.

7. The learned Additional Public Prosecutor for the State submits that the bail granted to the respondent ought to be cancelled as the learned Trial Court has failed to appreciate the bar under Section 37 of the NDPS Act and granted bail on erroneous grounds.



8. He submits that it is natural for the colour of the contraband to change and appear differently at different stages. He further submits that the recovered contraband was Heroin and it is natural for the same to become slightly solid with passage of time. He submits that a slight change in shade and colour is ordinary and it is difficult for an ordinary person to state whether the same is a different material than what was seized.

9. He submits that the learned Trial Court has held that the arrest of the respondent was illegal owing to non-communication of the grounds of arrest in writing by placing reliance on the case of **Pankaj Bansal v. Union of India : (2024) 7 SCC 576**, however, the respondent was arrested prior to passing of the judgment in the said case. He submits that the effect of the decision in the aforesaid case was prospective and not retrospective.

10. He submits that official witnesses are sufficient to corroborate the recovery and the respondent ought not to have been granted bail on account of lack of independent witnesses.

11. I have heard the counsel and perused the record.

12. It is trite law that an order granting bail ought not to be disturbed by a superior court unless there are strong reasons to do so. The party seeking setting aside of an order granting bail must establish a compelling case and demonstrate that the said order was illegal, unjust or improper. The Hon'ble Apex Court in **Mahipal vs. Rajesh Kumar @ Polia and Anr : (2020) 2 SCC 118**, has opined as under :

“12. The determination of whether a case is fit for the grant of bail involves the balancing of numerous factors, among which the nature of the offence, the severity of the punishment and a prima facie view of the involvement of the



accused are important. No straitjacket formula exists for courts to assess an application for the grant or rejection of bail. At the stage of assessing whether a case is fit for the grant of bail, the court is not required to enter into a detailed analysis of the evidence on record to establish beyond reasonable doubt the commission of the crime by the accused. That is a matter for trial. However, the Court is required to examine whether there is a prima facie or reasonable ground to believe that the accused had committed the offence and on a balance of the considerations involved, the continued custody of the accused subserves the purpose of the criminal justice system. Where bail has been granted by a lower court, an appellate court must be slow to interfere and ought to be guided by the principles set out for the exercise of the power to set aside bail.

13. The principles that guide this Court in assessing the correctness of an order [Ashish Chatterjee v. State of W.B., CRM No. 272 of 2010, order dated 11-1-2010 (Cal)] passed by the High Court granting bail were succinctly laid down by this Court in Prasanta Kumar Sarkar v. Ashis Chatterjee [Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496 : (2011) 3 SCC (Cri) 765] . In that case, the accused was facing trial for an offence punishable under Section 302 of the Penal Code. Several bail applications filed by the accused were dismissed by the Additional Chief Judicial Magistrate. The High Court in turn allowed the bail application filed by the accused. Setting aside the order [Ashish Chatterjee v. State of W.B., CRM No. 272 of 2010, order dated 11-1-2010 (Cal)] of the High Court, D.K. Jain, J., speaking for a two-Judge Bench of this Court, held : (SCC pp. 499-500, paras 9-10)

“9. ... It is trite that this Court does not, normally, interfere with an order [Ashish Chatterjee v. State of W.B., CRM No. 272 of 2010, order dated 11-1-2010 (Cal)] passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of



- the accused;
(vi) likelihood of the offence being repeated;
(vii) reasonable apprehension of the witnesses being influenced; and
(viii) danger, of course, of justice being thwarted by grant of bail.

10. It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of non-application of mind, rendering it to be illegal.”

14. The provision for an accused to be released on bail touches upon the liberty of an individual. It is for this reason that this Court does not ordinarily interfere with an order of the High Court granting bail. However, where the discretion of the High Court to grant bail has been exercised without the due application of mind or in contravention of the directions of this Court, such an order granting bail is liable to be set aside. The Court is required to factor, amongst other things, a prima facie view that the accused had committed the offence, the nature and gravity of the offence and the likelihood of the accused obstructing the proceedings of the trial in any manner or evading the course of justice. The provision for being released on bail draws an appropriate balance between public interest in the administration of justice and the protection of individual liberty pending adjudication of the case. However, the grant of bail is to be secured within the bounds of the law and in compliance with the conditions laid down by this Court. It is for this reason that a court must balance numerous factors that guide the exercise of the discretionary power to grant bail on a case-by-case basis. Inherent in this determination is whether, on an analysis of the record, it appears that there is a prima facie or reasonable cause to believe that the accused had committed the crime. It is not relevant at this stage for the court to examine in detail the evidence on record to come to a conclusive finding.

16. The considerations that guide the power of an appellate court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for the cancellation of bail. The correctness of an order granting bail is tested on the anvil of whether there was an improper or arbitrary exercise of the discretion in the grant of bail. The test is whether the order granting bail is perverse, illegal or unjustified. On the other hand, an application for cancellation of bail is generally examined on



the anvil of the existence of supervening circumstances or violations of the conditions of bail by a person to whom bail has been granted...”

(emphasis supplied)

13. This Court finds merit in the arguments tendered by the State in relation to change in color of contraband. Mere minor infraction in color of contraband, which appear to have been observed by the learned Trial Court without appreciating the nature of the contraband, could not have been a ground to hold that there is a *material discrepancy* at the stage of consideration the application for bail. Such a discrepancy can only be assessed after the evidence is led by the parties. The minor infraction noted may raise some doubt, however, the same is not fatal for the case of the prosecution at the time of consideration for application for bail, especially when there appears to be a scientific rationale behind the change in question.

14. The Hon’ble High Court of Punjab and Haryana in the case of ***Sonu @ Rinka v. State of Punjab : CRM-M55633-2024*** had observed that bail cannot be granted to the accused due to minute difference in color of contraband as has been assessed by a laboratory profession and police officer. The relevant portion is as under:

*“9. A simple reference to the above reveals that the little bit of fiction would change the shade and it is very difficult for an ordinary person to state whether the colour is off white or bhura. Further bhura does not mean brown. It is somewhat a shade between off white and brown. Simply because in the laboratory, the word used was off white, it would not mean that the sample was initially brown. **The laboratory people having scientific temperament would analyse the colour in a better way than the normal person and the only exception is being the colour artist. Needless to say that the police officer/Investigator were not expert of colours nor proved to be somebody who has scientific background to understand the difference in colour nor is shown to have***



been artist of colour. As such, without giving an opportunity to the Investigator to explain the difference in colour, **it shall be extremely unjust for this Court to grant bail simply on the minute difference of bhura (dark off white) as stated in the recovery and off white as stated by the laboratory.** Thus, **the petitioner is not entitled to bail on this ground..”**

15. This Court also agrees with the argument raised by the State in regard to the prospective application of the decision in the case of **Pankaj Bansal v. Union of India** (*supra*). In the case of **Ram Kishor Arora v. Directorate of Enforcement : 2023 INSC 1082**, the Hon’ble Apex Court categorically held that the decision in the case of **Pankaj Bansal v. Union of India** (*supra*) will be applied retrospectively as it was directed that a written copy of the grounds of arrest are to be necessarily supplied in writing “henceforth”.

16. Even otherwise, the Hon’ble Apex Court in the case of **State of Karnataka v. Sri Darshan : 2025 SCC OnLine SC 1702** has clarified that while the procedural mandate of supply of written grounds is mandatory, however, the mere absence of the same does not render the arrest illegal unless the accused is prejudiced due to denial of fair opportunity. The arrest in the present case was made way back on 24.09.2023. Pursuant to the said arrest, the charges have also been framed after hearing the arguments on behalf of the accused. No prejudice can be held to have been caused to the accused after almost two years of his arrest when concededly, he had been represented by a counsel and had been appearing before the Trial Court.

17. However, although two of the grounds agitated by the State appear to be meritorious, this Court does not consider the present case to be fit for cancellation of bail and setting aside of



the impugned order as the learned Trial Court has rightly noted that non joining of public witnesses in spite of the recovery being made at a public place during busy hours on prior information, and not making any videography and photography, creates certain doubts at this stage.

18. 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.

19. In the present case, it is stated that although efforts were made to join independent persons, however, they left after giving some explanation. The recovery was effected more than six hours after receiving of secret information in a busy place. 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 respondent, especially since he has already spent a substantial time in custody.

20. Moreover, the respondent has spent almost two years in custody in the present case and the trial is unlikely to conclude in the near future. Although it is argued that the bail granted to the respondent ought to be cancelled on account of the rigours of



Section 37 of the NDPS Act, however, 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 the aforesaid provision. 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)

21. 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 a considerable amount of time.

22. 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....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)

23. 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 precedence over the statutory restrictions under Section 37 of the NDPS Act.

24. In such circumstances, in the present case, I do not see any



such ground being made out against the respondent. In ***Deepak Yadav v. State of U.P. : (2022) 8 SCC 559***, the Hon'ble Apex Court has emphasised that bail once granted, should not be cancelled in a mechanical manner. Cancellation of bail must be on very cogent and overwhelming circumstances. 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 delay in the completion of the trial.

25. In view of the above, I find no reason to interfere with the impugned order. The petition is, therefore, dismissed.

26. It is made clear that the observations made by the learned Trial Court or in the present order are only made for the purpose of deciding the application for bail and be not be taken as opinion on the merits of the case and shall not affect the trial in any manner.

AMIT MAHAJAN, J

OCTOBER 16, 2025

“SK”