IN THE HIGH COURT AT CALCUTTA
CRIMINAL MISCELLANEOUS JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

C.R.M. (NDPS) 1295 of 2026

Anil Gupta
-vs.-
Union of India

For the Petitioner : Mr. Sourav Chatterjee, Sr. Adv.,
Mr. Antarikhya Basu, Adv.,
Ms. Madhumita Basak, Adv.,
Ms. Mayanakshi Saha, Adv.

For the DRI Authority : Mr. Nadeem Sulaiman, Adv.,
Mr. Tapan Bhanja, Adv.
Mr. Gourab Karmakar, Adv.,

Reserved on : 28.09.2026

Judgment on : 17.11.2026

Tirthankar Ghosh, J:-

Petitioner has prayed for bail in connection with the order dated 19.05.2026 passed by the Learned Additional District and Sessions Judge, 8th Court Barasat, in connection with Case No. N-275/2025 arising out of DRI Case No. DRI/KZU/NDPS/ENQ-106/2025 under Section 8 (c)/21 (c)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1958, wherein the Learned Special Court was pleased to reject the prayer for bail of the petitioner.

Learned Advocate appearing on behalf of the petitioner submitted

that the petitioner is the licensee of Green Inn Restaurant-Cum-Bar, located at 10F, B.T. Road, North 24 Parganas, West Bengal and his wife, Smt. Nitu Gupta, is the licensee of Cossipore F.L. Off Shop. Petitioner has maintained his business operations continuously and lawfully for a long period of time, as evidenced by the successive annual renewals of their respective excise licenses. Petitioner is not involved in any illicit activities and manages his legitimate business in full compliance with the West Bengal Excise Act, 1909. According to the petitioner on 04.12.2025, at about 3:00 p.m., suddenly, officers of the Directorate of Revenue Intelligence (DRI), along with a Gazetted Officer and four Intelligence Officers, accompanied by two independent panchas, arrived at the petitioner's shop, namely, Cossipore F.L. Off Shop, under the garb of searching Koushik Bera. When petitioner questioned the search of Koushik Bera, who is an employee of Cossipore F.L. Off Shop, the DRI officers, immediately at about 3:15 p.m., upon entering the shop premises, arbitrarily tagged the petitioner along with Koushik Bera, treating him as an associate without any legal basis, and apprehended him on mere suspicion.

Thereafter, the officers of the Directorate of Revenue Intelligence (DRI) forcibly took the petitioner, along with the co-accused, namely, Koushik Bera, and two other independent witnesses, approximately 8 to 10 kilometres away from his shop at Cossipore, to the commercial warehouse of VRL Logistics at Agarpara Jute Mill

premises. At the warehouse, while under severe custodial duress, physical intimidation and threat of immediate arrest, the petitioner was forced to initiate a UPI transaction of Rs. 2,222/- from Account No. 50200049888076, registered in the name of M/S Cossipore F.L. Off Shop to VRL Logistics on the pretext of receiving a consignment so as to falsely establish a financial connection. The officers subsequently received the consignment under such false pretext. The said transaction was entirely non-voluntary, extorted and staged by the officers. Immediately thereafter, on the evening of 04.12.2025, the officers forced the petitioner and Koushik Bera into their vehicles and took them to the DRI office at New Town, Kolkata, at about 5:00 p.m., where they were illegally detained and subsequently shown as arrested in the early morning of 05.12.2025 at about 01:10 a.m. Strikingly, throughout these high-handed actions at the warehouse and during transit on 04.12.2025, the investigating officers failed to secure any independent local witness to the alleged recovery and relied solely upon their own arranged witnesses in violation of the procedural safeguards under Section 103(4) of the Bharatiya Nagarik Suraksha Sanhita, 2023. Furthermore, there was an absolute lack of contemporaneous on spot videography of the search, recovery and seizure proceedings at the warehouse on 04.12.2025 and 05.12.2025. This complete omission violates the standard operating procedures and mandatory directives laid down by this Hon'ble Court in *CRM (NDPS) 492 of 2022* (Kalu Sk @ Kuran v. State of West Bengal) with

CRM (NDPS) 493 of 2022 (Kabir Sk. v. State of West Bengal).

According to the learned Advocate, the prosecution's case suffers from fatal legal infirmity, as no on-the-spot search list, recovery memo or seizure list was prepared either at the shop premises or at the VRL Logistics warehouse at the Agarpara Jute Mill premises. Instead, the petitioner and the co-accused were forcibly taken directly to the DRI office at New Town, Kolkata, where the officers subsequently manufactured and drew up a combined consolidated Inventory-cum-Seizure list at their desks. It is a settled principle of law that seizure and inventory are distinct and separate procedures which cannot be merged into a single document, and the preparation of such a combined list post-facto at the agency's office, rather than at the place of recovery, constitutes a gross violation of the mandatory provision of the NDPS Act, thereby completely vitiating the evidentiary foundation of the prosecution's case. Lastly, the alleged DRI search was carried out on 04.12.2025. However, when this search record is placed against the DRI's own formal complaint, which asserts that the intelligence was received and developed only on the morning of 05.12.2025, it presents an absolute physical and temporal impossibility. This reveals that the search story is completely fabricated and back dated and shows that the DRI officers drew up these records at their desks prior to any actual interception or raid being carried out.

Learned Advocate appearing for the petitioner has argued the case on two points, which are absence of videography of the search and seizure at the place of occurrence and involvement of stock witnesses by the DRI at the time of the search and seizure.

It was submitted on behalf of the petitioner that the standard operating procedure of DRI during search operation reflects that the same should commence prior to entry at the premises by the DRI search team and the audio-video recording should be continuous. The SOP emphasizes that the camera must continuously follow the search team. Surprisingly, the first production petition dated 05.12.2025 reflects that a Hyundai i20 car was intercepted and a person driving the vehicle, namely Md. Rajesh on questioning admitted that cough syrup bottles were kept at the boot space of the vehicle. Md. Rajesh divulged that such cough syrup bottles were handed over to him by one Koushik Bera. A set of other officers along with two independent witnesses subsequently apprehended Koushik Bera and on reaching Cossipore F.L. Off Shop they intercepted Koushik Bera and Anil Gupta (the petitioner herein). The first production petition do not disclose with regard to any videography being conducted throughout the process of search and seizure. However, the prayer reflects that the prosecution intended to deposit the memory cards containing reconstructed audio-video recordings of the recovery proceedings.

The petition of complaint filed by the DRI discloses that the DRI officers along with Koushik Bera, Anil Gupta and two other independent witnesses had been to godown of VRL Logistics inside Agarpara Jute mill and

another 1,000 bottles of cough syrup were recovered therefrom. The petitioner was compelled to pay a sum of Rs.2,222/- in favour of VRL Logistics at the behest of DRI officers. It was claimed by the DRI that the entire search and seizure procedure was recorded in audio-video mode and stored in memory cards. However, the memory card numbers mentioned in the petition of complaint do not tally with the number of the memory cards mentioned in the prayer of the first production petition.

It was pointed out that the affidavit-in-opposition filed by the DRI disclosed that videography of search and seizure was conducted only at the office of DRI which bolsters the contention of the petitioner that no videography was conducted from inception and the same was done at the office of the DRI. Such piecemeal videography is per se illegal and dilutes the authenticity of the prosecution case.

In order to fortify his argument, learned advocate for the petitioner referred to series of judgements relating to videography of search and seizure.

Relying upon *Mithun Das & Anr. -versus- State of West Bengal, CRM (NDPS) 144 of 2026* petitioner submitted that the Hon'ble High Court was pleased to hold that it is the bounden duty of this court to ensure that the directions given are fully complied with. In the said case, the seizure was not video-graphed as such after expressing its opinion that procedures are laid down to ensure safe-guards for fulfilling the constitutional mandates and non-compliance of the same is a serious breach, the court was pleased to grant bail to the accused. Similar views were expressed by the

Court in *Sonal Barman & Ors. v. State of West Bengal, CRM (NDPS) 318 of 2025* and *Shakti Nath Bhowmik @ Sakti Nath Bhowmik & Ors., CRM (NDPS) 602 of 2025*. Attention of the Court was drawn to *Samit Mandal –versus- State of West Bengal, CRM (NDPS) 1444 of 2023*.

Reference was made to reported judgment of the Hon'ble Apex Court in *Shafhi Mohammad v. State of Himachal Pradesh, (2018) 5 SCC 311* in relation to the suggestions of videography, which may be an effective tool in investigation.

Emphasis was laid on the fact that the State as well as the Central Government Agencies were directed to undertake training programs for creating awareness relating to videography of recovery proceedings.

On an assessment of the search and seizure conducted in the case, it was observed by the Hon'ble High Court that there was palpable violation on the part of the investigating agency, as no videography of the seizure of narcotics from the petitioner was done in the said place. There were no independent witnesses, as such, the petitioner was released on bail.

In the case of *Jahiruddin Sk. V. The State of West Bengal,* CRA (DB) 217 of 2024, the attention of this court was drawn by the petitioner to the observations of the Division Bench, wherein reliance was placed upon *Kalu Sk. v. State of W.B., reported in 2022 SCC OnLine Cal 4556* and it was observed that smart phones are carried by the investigating officers, which makes them easier to videograph the entire process of the search and seizure or at least photographs of the said process using their phone.

However, in spite of the same being available, the investigating agency having not done the same and there were no independent witnesses to support the prosecution case, benefit was extended to the appellant therein.

Learned advocate thereafter submitted that the Hon'ble High Court primarily relied upon *Shafhi Mohammad* (supra), as well as the guidelines laid down in *Kalu Sk. v. State of W.B.,* reported in *CRM (NDPS) 492 of 2022 and CRM (NDPS) 493 of 2022* to assert the importance of videography and the same not being done, it was held that the search and seizure was infructuous.

Attention of this Court was drawn by the petitioner to the judgment of the Hon'ble Bombay High Court in *Gaurang Jitendra Khair v. Narcotics Control Bureau & Anr., (Criminal Bail Application No. 3506 of 2022)*, and it was emphasized that relying upon the judgments of *Kalu Sk. @ Kuran (supra) and Kabir Sekh* (supra), and taking into account the observations in Shafhi Mohammad v. State of Himachal Pradesh, (2018) 5 SCC 311, the petitioner was released on bail, holding that there were reasonable grounds to believe him not guilty of the offence for the purposes of Section 37 of the NDPS Act.

Petitioner also referred to the judgment of the Delhi High Court, being *Bail Application No. 1022 of 2026, (Arinze Hillary Ali v. State of Delhi)* and submitted that in a similar set of circumstances, wherein there was absence of photography and videography and no independent witnesses were present during seizure, the accused was granted the benefit of doubt

at the stage of bail. Learned advocate stressed on the observations made in the judgment, particularly where the recovery of contraband is supported only by official witnesses and no videography of the search and seizure was done in presence of independent witnesses a doubt is cast on the recovery of contraband unless the same is justified by cogent reasons. It was specifically held in the judgment that the aforesaid grounds are relevant factors while considering the bail application as the same casts shadow over the very fulcrum of the case.

Petitioner also relied upon Sarfaraj v. State (NCT of Delhi), reported in 2026 SCC OnLine Del 3737, and submitted that the reasoning assigned in the earlier judgment with regard to the absence of photography or videography and independent witnesses was relied upon and the accused was released on bail.

On the issue relating to the witnesses relied upon by the DRI in the course of search and seizure it was submitted that the four so-called independent witnesses relied upon by the DRI in the petition of complaint are Abhijit Mondal (CSW-20), Ranjit Barui (CSW-21), Dilip Haldar (CSW-22) and Pobitra Biswas (CSW-23). According to the petitioner, these four witnesses are stock witnesses of the DRI, as they have been cited as witnesses in a number of criminal prosecutions/investigations conducted by the DRI. In order to illustrate the same, petitioner relied upon the following list of cases:

(i) DRI/KZU/NDPS/ENQ-39/2026 – wherein Dilip Halder and Ranjit Barui were cited as independent witnesses.

(ii) DRI/KZU/NDPS/ENQ-80/2025 – wherein Dilip Halder, Abhijit Mandal and Ranjit Barui were cited as independent witnesses.

The DRI did not deny in respect of the seizure lists which were referred in respect of the aforesaid two criminal cases.

Petitioner argued that the witnesses cited are projected as independent witnesses, but in reality they are stock witnesses/panchas of search and seizure in NDPS cases, who are relied upon to curtail the liberty of individuals by invoking the stringent provisions of the NDPS Act.

It was also brought to the notice of the Court that although 'Md. Rajesh' name is typed on each of the inventory-cum-seizure lists, his signature does not appear on the said documents.

The petitioner, therefore, relied upon the celebrated judgment of the Hon'ble Supreme Court of India in *Prem Chand (Paniwala) v. Union of India*, reported in *(1981) 1 SCC 639* and submitted that the Hon'ble Apex Court expressed serious concern with regard to an investigating agency using stock witnesses and held that there may be difficulties in detection and proof and strain upon the police in tracking down criminals; however, fundamental rights are fundamental and personal liberty cannot be placed at the mercy of the police.

The Hon'ble Delhi High Court in *Kashmir Singh v. Narcotics Control Bureau. (Bail Application No. 2314 of 2026),* relying upon the decision in *Prem Chand* (supra), granted bail.

The Hon'ble Delhi High Court, in *Amarjit Singh v. DRI*, reported in *2009 SCC OnLine Del 1684*, once again granted bail on the ground, inter alia, of planting stock witnesses.

Learned advocate for the petitioner finally submitted that the aforesaid discrepancies are not mere irregularities but glaring illegality which entitles the petitioner to be released on bail.

Mr. Suleman, learned advocate appearing for the DRI, submitted that on 04.12.2025, an information was received that a Hyundai i20 car bearing Registration No. WB 02 AC 0140 was proceeding along Jessore Road and carrying contraband, i.e., Eskuf cough syrup, whose sale, purchase and transport are prohibited under the NDPS Act. A team of officers of DRI reached at Bira on Jessore Road at about 13:45 hours and intercepted the Hyundai i20 vehicle parked near the roadside at Bira. A person was available at the car, who disclosed his identity as Md. Rajesh. On enquiry, he admitted that bottles of Eskuf cough syrup were available and kept at the boot space of the vehicle. He was offered an option in writing relating to his search when he opted to be searched before a Gazetted Officer and also requested that such search be conducted at a different place for safety and security reasons. A notice under Section 67 of the NDPS Act was served, requiring him to appear at the office of DRI, Kolkata Zonal Unit. On further enquiry, Md. Rajesh divulged that the bottles of Eskuf cough syrup which were available in the vehicle was handed over to him by Koushik Bera. On the instructions of Koushik Bera, the Eskuf cough syrup bottles were to be handed over to different recipients at Panchpota near Bangaon for onward

supply to Bangladesh. He also informed that Koushik Bera would be available at Cossipore F.L. Off Shop at Cossipore.

On receipt of the said information, DRI officers along with independent witnesses proceeded towards Cossipore F.L. Off Shop and on being identified they intercepted Koushik Bera and Anil Gupta. On repeated questioning, Koushik Bera admitted that the consignment had been handed over by him to Md. Rajesh on the instructions of Anil Gupta. On further interrogation both the accused persons informed that another consignment of Eskuf cough syrup was lying at the godown of VRL Logistics at Agarpara and the consignee therein was named as M/s Ray Computer and Electronics. A search conducted resulted in the recovery of ten cartons/ boxes from VRL Logistics at Agarpara. Both the accused persons were served with notices and they were brought at the office of the DRI. The recovery from the Hyundai i20 vehicle was 42 cartons/boxes wherein 1,042 bottles of Eskuf cough syrup was recovered and ten cartons/ boxes were recovered from the godown of VRL Logistics at Agarpara which contained 1,000 bottles of cough syrup, aggregating to a recovery of 2,042 bottles of Eskuf cough syrup.

It was submitted that at the place of recovery at Agarpara, as many people started gathering and they became curious and inquisitive, so after intimating the persons detained for security reasons the recovered contraband were brought to the office of DRI, seized and videography of the same were done. The memory card of audio-video recordings and their hash values thereof were generated by a forensic expert.

In order to ascertain the further complicity of Md. Rajesh, Koushik Bera and Anil Gupta, their further statements were recorded, particularly with regard to the illicit smuggling of cough syrup into Bangladesh and on reasonable belief of their conspiracy to obtain the 2,042 bottles of seized cough syrup they were arrested on 05.12.2025 for violation of the provisions of the NDPS Act.

It was further submitted that in the course of investigation Koushik Bera divulged that consignment had been booked from Delhi with M/s ATC Logistics Solution Private Limited in the name of M/s Ray Computer and Electronics. Information was sent to the transporter in respect of the said consignment and on 11.12.2025 it was informed through e-mail by the transporter that the said consignment has reached Kolkata and has been kept at the godown located at Kaliprasanna Sinha Road, Kolkata. A team of officers on 12.12.2025 reached the said address and on examination of the consignment found 14 packets from which 1,400 bottles of cough syrup/ codeine mixture, each of 100 ml was available. The staff of the transporter further informed that another consignment of M/s Ray Computer and Electronics had been kept at the godown. The said consignment was examined and another 1,000 bottles of codeine cough syrup were recovered. Total 2,400 bottles were recovered and whole of the process of search and seizure was photographed/audio-videographed at the place of seizure. Investigation revealed that the accused persons booked such consignments in the names of M/s Ray Computer and Electronics and M/s Bablani Brothers and area in-charge of VRL Logistics confirmed that the

consignments were received by Koushik Bera by furnishing his identity proof and signature. Further, the mobile number available in the invoice was used by Koushik Bera.

Analysis of call detail records reflected that Anil Gupta frequently exchanged calls with Koushik Bera. The mobile number of Koushik Bera also reflected several text messages exchanged with M/s ATC Logistics Solution Private Limited and M/s VRL Logistics. Anil Gupta was also in regular contact with Dilip Gupta, who used to send consignments from Delhi. Koushik Bera was also in regular contact with Md. Rajesh and in the morning of 04.12.2025 three calls were exchanged between them. The CDR of Md. Rajesh also reflected the mobile numbers of persons relating to recipients of the contraband. The WhatsApp chats of Anil Gupta with Koushik Bera reflected the forwarding of consignor's copy in the name of M/s Ray Computer and Electronics.

It was submitted that the CDR and WhatsApp messages of the three accused persons would reflect a chain of circumstances including the consignor copies, bank transactions and invoices.

It was emphasized that there were cogent reasons for not photographing or audio-video recording of the seizure dated 04.12.2025, however, the seizure dated 12.12.2025 was videographed and photographed. As such, the issue of citing seizure list witnesses who are alleged to be stock witnesses are irrelevant as there are other clinching evidence which make out a watertight case against the petitioner and do not make out any

circumstances to overcome the bar of Section 37 of the NDPS Act. As such, the prayer for bail of the petitioner should be rejected.

I have taken into account the submissions of the respective parties and on an assessment of the same I find that the petitioner's main concern is that no videography was done at the time of seizure and that stock witnesses have been relied upon in order to justify such seizure by the prosecution.

On an assessment of the documents relied upon by the DRI/ Prosecution it is reflected that on two dates seizures were effected, firstly on 04.12.2025 and secondly on 12.12.2025. In respect of the seizure on 04.12.2025 prosecution assigned their reasons that the local people assembled and became curious as such for security reasons the seized materials were brought to the office of DRI and inventory along with videography was done. So far as seizure on 12.12.2025 is concerned photographs of the contraband were taken at the godown of ATL Logistics along with audio video recording of such search and seizure. To that effect DRI/ Prosecution has enclosed the relevant documents in their supplementary affidavit-in-opposition.

In this case the argument advanced on behalf of the petitioner is that no videography of search and seizure was effected at the place of seizure, the documents relied upon by the prosecution before this Court, particularly the second seizure dated 12.12.2025 do demolish such factual issue raised by the petitioner. So far as the first seizure is concerned reasons have been assigned by the prosecution for their

inability to videograph at the place of seizure.

The issue relating to videography assumes importance as in cases under the NDPS, Act the legitimacy relating to recovery of the contraband is the foundation and plinth of prosecution case and possibility of false implication can be ruled out. Taking into account the materials placed in this case by the prosecution at this stage the issue of false implication, particularly nexus of the petitioner with the chain of events including recovery cannot be ruled out. Consequently, the issue relating to same set of witnesses being cited in other cases by the DRI/Prosecution do not dilute the rigors of Section 37 of the NDPS.

Petitioner proceeded with the arguments that no videography of search and seizure of contraband in this case was done, as such the judgments relied upon by the petitioner has no applicability so far as the prosecution case is concerned because of the factual assertions, which are not only contrary but also are diametrically opposite to the documentary evidences/materials placed by the prosecution before this Court.

Accordingly, the application for bail of the petitioner in **C.R.M. (NDPS) 1295 of 2026** is **dismissed**.

Pending applications, if any, are consequently disposed of.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent Xerox certified photocopy of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Tirthankar Ghosh, J.)