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

+ **BAIL APPLN. 700/2026**

KANHIYA

.....Petitioner

Through: Mr. Yash Prakash Yadav, Mr. Akshit Sharma, Mr. Rohit Nain, Mr. Deepak, Ms. Sakshi Yadav, Mr. Aditya, Mr. Rahul Baisoya, Mr. Harmeet Singh, Mr. C.B. Garg, Advocates.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Yudhvair Singh Chauhan, APP. SI Chandra Shekhar, ANS/West.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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19.03.2026

1. The applicant seeks regular bail in connection with FIR No. 136/2023 dated 22.02.2023, registered at P.S. Rajouri Garden under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ["NDPS Act"].
2. The allegation in the FIR is that, the applicant was apprehended on 22.02.2023, on the basis of secret information, near Shivaji College, Rajouri Garden, and was found to be carrying a trolley bag from which eight packets of *ganja*, weighing a total of 22.302 kgs, were recovered. It is further stated that the applicant declined the offer to be searched before



a Gazetted Officer or Magistrate, as required under Section 50 of NDPS Act. The contraband was thereafter weighed and sampled before the Magistrate in compliance with Section 52A of NDPS Act. It is also alleged that one co-accused, Rajan @ Dev Kumar, was the supplier of the said contraband to the applicant; he has been arrayed as a co-accused in the present case and has been granted regular bail by the learned Special Court *vide* order dated 18.01.2025.

3. Mr. Yudhvair Singh Chauhan, learned Additional Public Prosecutor for the State, has handed over the status report in Court, which is taken on record.

4. Mr. Yash Prakash Yadav, learned counsel for the applicant, submits that the applicant has been in custody since 27.02.2023, i.e., for a period of over three years. He further submits that out of 22 witnesses, only 3 have been examined so far. While PW-5, Head Constable Vijay, is presently under examination, Mr. Yadav draws my attention to an order dated 05.09.2024 passed by the learned Special Court, which indicates that the examination of the said witness had commenced on that date. It is thus submitted that the examination of the same witness has been continuing for the last one and a half years.

5. Mr. Yadav further submits that the alleged seizure from the applicant was neither effected in the presence of any independent public witness nor videographed. He places reliance on the judgment of a co-ordinate Bench of this Court in *Bantu v. State (NCT of Delhi)*¹ in support of his submissions.

6. Mr. Chauhan, on the other hand, submits that the present case



involves recovery of a commercial quantity of *ganja*, i.e., over 20 kg, and therefore, attracts the rigours of Section 37 of NDPS Act. He further submits that since the recovery was effected directly from the applicant, the applicant is not entitled to the concession of bail.

7. In several judgments and orders of the Supreme Court, including *Mohd. Muslim v. State (NCT of Delhi)*², the period of incarceration has been considered a relevant factor for the grant of bail, even in cases falling under Section 37 of the NDPS Act. The Supreme Court has explained the test for satisfaction of Section 37(1)(b)(ii), in the following terms:

*“19. The conditions which courts have to be cognizant of are that there are reasonable grounds for believing that the accused is “not guilty of such offence” and that he is not likely to commit any offence while on bail. **What is meant by “not guilty” when all the evidence is not before the court? It can only be a prima facie determination.** That places the court's discretion within a very narrow margin. Given the mandate of the general law on bails (Sections 436, 437 and 439 CrPC) which classify offences based on their gravity, and instruct that certain serious crimes have to be dealt with differently while considering bail applications, **the additional condition that the court should be satisfied that the accused (who is in law presumed to be innocent) is not guilty, has to be interpreted reasonably.** Further the classification of offences under the Special Acts (the NDPS Act, etc.), which apply over and above the ordinary bail conditions required to be assessed by courts, require that the court records its satisfaction that the accused might not be guilty of the offence and that upon release, they are not likely to commit any offence. These two conditions have the effect of overshadowing other conditions.*

20. In cases where bail is sought, the court assesses the material on record such as the nature of the offence, likelihood of the accused cooperating with the investigation, not fleeing from justice: even in serious offences like murder, kidnapping, rape, etc. On the other hand, the court in these cases under such Special Acts, has to address itself principally on two facts: likely guilt of the accused and the likelihood

¹ 2024 SCC OnLine Del 4671 [hereinafter, “*Bantu*”].

² (2023) 18 SCC 166 [hereinafter, “*Md. Muslim*”].



of them not committing any offence upon release. This Court has generally upheld such conditions on the ground that liberty of such citizens has to—in cases when accused of offences enacted under special laws—be balanced against the public interest.

21. A plain and literal interpretation of the conditions under Section 37 (i.e. that court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. **Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty.** Any other interpretation would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

22. **The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused's guilt may be proved. The judgments of this Court have, therefore, emphasised that the satisfaction which courts are expected to record i.e. that the accused may not be guilty, is only prima facie, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation** (as held in *Union of India v. Rattan Mallik*, (2009) 2 SCC 624). **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 436-A which is applicable to offences under the NDPS Act too (ref. *Satender Kumar Antil v. CBI*, (2022) 10 SCC 51). 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.*³

8. Applying the aforesaid principles, the Court, for the purposes of Section 37(1)(b)(ii), is required to consider whether, on a *prima facie* and reasonable assessment, the accused may not be guilty. This exercise does not entail a mini trial or a meticulous examination of the entire material on record, but only a broad and *prima facie* evaluation.

³ Emphasis supplied.



9. At the same time, the Court is also required to balance the applicant's right to personal liberty under Article 21 of the Constitution with the statutory mandate of Section 37 of the Act. As clarified in *Mohd. Muslim*, the satisfaction required under Section 37 is only *prima facie* in nature, and does not mandate a finding of guilt beyond reasonable doubt.

10. This position has been reiterated in *Vipin Mittal v. National Investigating Agency*⁴, wherein a coordinate Bench of this Court, relying upon the judgments of the Supreme Court in *Union of India v. Mohd. Nawaz Khan*⁵, and *Md. Muslim* has affirmed that the satisfaction under Section 37 is only *prima facie* in nature.

11. In *Dheeraj Kumar Shukla v. State of Uttar Pradesh*⁶ the Supreme Court has also taken the view that the conditions under Section 37 of the NDPS Act "*can be dispensed with*" in cases of prolonged incarceration, even where the offence involves commercial quantities of contraband.

12. Reference may also be made to the judgment in *Bantu*⁷, wherein, even prior to the enactment of the Bharatiya Nagarik Suraksha Sanhita, 2023, the absence of a public witness at the time of seizure and lack of videography, were considered relevant factors.

13. The record further indicates that only three out of the 22 witnesses have been examined so far, with the examination of the same witness continuing for the past one and a half years. It, therefore, appears unlikely that the trial will conclude in the near future.

14. Having regard to the aforesaid factors, and particularly in view of

⁴ 2023 SCC OnLine Del 3270, paragraph 15 [hereinafter, "*Vipin Mittal*"].

⁵ (2021) 10 SCC 100.

⁶ 2023 SCC OnLine SC 918.

⁷ Paragraph No. 81



the fact that the applicant has already undergone more than 3 years of judicial custody, with the trial likely to take a substantial further period, it is directed that the applicant be released on bail, subject to furnishing a personal bond in the sum of Rs. 30,000/- with one surety in the like amount to the satisfaction of the learned Special Court/Duty Metropolitan Magistrate, and subject to the following conditions:

- a) The applicant shall provide his mobile number to the concerned Investigating Officer/Station House Officer, which shall be kept operational at all times. The said mobile number shall neither be switched off nor changed without prior intimation to the Investigating Officer during the pendency of the trial;
- b) The applicant shall furnish his permanent address to the learned Special Court, as well as the address at which he is residing during the pendency of the case. In the event of any change in residential address, the applicant shall duly intimate the Investigating Officer and file an affidavit to that effect before the learned Special Court;
- c) The applicant shall not involve himself in any other offence during the period of bail;
- d) The applicant shall appear before the learned Special Court on each and every date of hearing;
- e) The applicant shall not tamper with the evidence, nor otherwise indulge in any act or omission that is unlawful or that may prejudice the proceedings in the trial;
- f) The applicant shall not contact, visit, or offer any inducement, threat, or promise to any of the prosecution witnesses or other persons acquainted with the facts of the case;



g) The applicant shall not commit any offence during the period of his release.

15. The bail application is disposed of in terms of the above.

16. It is clarified that any observations made in the present order are solely for the purpose of deciding the present bail application, and shall neither influence the trial proceedings, nor be construed as an expression of opinion on the merits of the case.

17. Copy of the order be communicated to the concerned Jail Superintendent electronically for necessary information and compliance.

PRATEEK JALAN, J

MARCH 19, 2026

'Bhupi'/SD/