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

+ **BAIL APPLN. 764/2026**

PRAKASH SHARMA

.....Applicant

Through: Ms. Pallavi Garg, Adv. (DHCSLC)
with Ms. Sanjana Sharma Sahu,
Adv.

Versus

THE STATE (GOVT. OF NCT) DELHI

.....Respondent

Through: Ms. Meenakshi Dahiya, APP for the
State with Mr. Aditya Vikram
Singh, Adv. alongwith ASI
Virender, Crime Branch.

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

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19.05.2026

1. By virtue of the present application under *Section 483* read with *Section 528* of the Bharatiya Nagarik Suraksha Sanhita, 2023 (**BNSS**), the applicant seeks grant of regular bail in FIR No.234/2023 dated 03.10.2023 registered at PS.: Crime Branch, North District under *Sections 20(C)/25/29* of the Narcotic Drugs and Psychotropic Substances Act, 1985 (**NDPS**).

2. As per the FIR, acting on a secret information, in a raid conducted on 13.10.2023 '45 kgs. of Ganja' (**contraband**), concealed in three plastic bags hidden in the cavity and boot space of the car was recovered and seized therefrom. Consequently, the accused persons were arrested after following due procedure under the NDPS Act. Thence, during investigation, as per the Call Detail Records (**CDR**), it was revealed that



the applicant herein was in contact with all the co-accused persons at the relevant time whence the contraband was being transported to Delhi.

3. It is under the aforesaid factual backdrop, that this Court has heard learned counsel for the applicant as also the learned APP for State.

4. As borne out, the primary thrust of learned counsel for applicant pertains to the non-compliance/ violation of the Standing Order No.1/80 dated 15.03.1988 (SO) and Section 52A of the NDPS particularly since there was a delay of 'ten days' on behalf of the prosecution to supply the contraband to the FSL. Reliance in this regard is placed upon **Noor Aga v. State of Punjab: (2008) 16 SCC 417**. In fact, learned counsel also submits that there are material contradictions regarding receipt of secret information which is in violation of Section 42(2) of the NDPS as also non-compliance of Section 50 of the NDPS Act.

5. In response, learned APP for State has relied upon the Status Report and urged this Court not to grant bail to the applicant herein.

6. After hearing both learned counsel for applicant and the learned APP, this Court notes that the Hon'ble Supreme Court, whilst addressing the issue of compliance of the SO and Section 52A of the NDPS Act in **Bharat Aambale v. The State of Chhattisgarh: (2025) 8 SCC 452**, has recently held as under:-

"50. We summarize our final conclusion as under: -

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(V) Mere non-compliance of the procedure under Section 52A or the Standing Order(s)/ Rules thereunder will not be fatal to the trial unless there are discrepancies in the physical evidence rendering the prosecution's case doubtful, which may not have been there had such compliance been done. Courts should take a holistic and cumulative view of the



discrepancies that may exist in the evidence adduced by the prosecution and appreciate the same more carefully keeping in mind the procedural lapses.

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(VII) Non-compliance or delayed compliance of the said provision or rules thereunder may lead the court to drawing an adverse inference against the prosecution, however, *no hard and fast rule can be laid down as to when such inference may be drawn, and it would all depend on the peculiar facts and circumstances of each case.*”

[Emphasis Supplied]

7. Therefore, the facts of the present case have to be viewed on the basis of findings rendered by the Hon’ble Supreme Court hereinabove in ***Bharat Aambale (supra)***. Moreover, though there was a delay of ‘13 days’ in the present case, however, since there are no averments and/ or evidence(s) evincing any prejudice caused to the applicant herein with respect to the delay in sending/ delivering the contraband/ seized article for sampling, it is too early for this Court to return any finding *qua* that.

8. Similarly, as held by the Hon’ble Supreme Court in ***Union of India through Narcotic Bureau, Lucknow v. Md. Nawaz Khan: 2025 INSC 526*** and ***State of Punjab v. Baldev Singh: (1999) 6 SCC 172***, the issue of non-compliance of *Section 42(2)* as also *Section 50* of the NDPS Act, if any, are matters of trial and cannot be adverted to/ dealt with at this stage where the applicant is seeking grant of a regular bail. Similarly, the non-production of third-party/ public witnesses cannot, *ipso facto*, be fatal to the case of the prosecution at the stage of granting bail to the applicant and the filing of the charge-sheet by itself does not tantamount to grant of bail.

9. Further, as held in ***Union of India v. Niyazuddin SK & Anr.: (2018) 13 SCC 738***, for granting bail to the applicant, the twin conditions



thereof being (i) that there are *reasonable grounds* for ‘believing that the applicant is not guilty of such offence’, and (ii) that the ‘applicant is not likely to commit any offence while on bail’, are to be taken into consideration, more so, if the Public Prosecutor has opposed the grant of bail.

10. As such, even though the applicant is in Judicial Custody since 03.10.2023, however, considering the facts involved, particularly, as it cannot be denied that the recovery of the contraband was made from three plastic bags hidden in the cavity and boot of the vehicle, where all the accused persons were present, as also the presence of CDR records showing that the applicant was in active contact with all the co-accused persons at the day whence the contraband was being transported to Delhi, as also since only *seven* out of *twenty-eight* witnesses have been examined and also considering that the present case involves recovery of a ‘*commercial quantity*’ under the NDPS Act, thereby attracting the stringent rigours of *Section 37* of the NDPS Act and neither of the *twin conditions* contemplated thereof stands satisfied, the present application of the applicant for regular bail is dismissed.

11. Needless to say, expression of view(s) on the merits, if any, are solely for the purposes of adjudication of the present application and shall have no bearing on the overall case/ trial involved.

SAURABH BANERJEE, J

MAY 19, 2026/bh