



\$~J-

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

Judgment delivered on: 28.03.2026

+ BAIL APPLN. 1450/2025 & CRL.M.A. 3075/2026
MOHAN BABU GUPTA

.....Petitioner

Through: Mr. Akshay Bhandari, Mr. Janak Raj
Ambavat, Ms. Megha Saroa, Mr.
Kushal Kumar and Mr. Anmol
Sachdeva, Advocates.

versus

STATE GOVT OF NCT OF DELHI

.....Respondent

Through: Ms. Shubhi Gupta, APP for the State.
SI Dharmender, P.S.: Spl. Cell NR &
STF, Rohini.

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI, J.

By way of the present petition filed under section 483 read with 528 of the Bharatiya Nagarik Suraksha Sanhita 2023, the petitioner seeks regular bail in case FIR No.337/2022 dated 15.11.2022 registered under section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act') at P.S.: Special Cell, Delhi. Consequent upon completion of investigation, offences under section 29 of the NDPS Act and section 14 of the Foreigners Act, 1946 have been added *vide* chargesheet dated 09.05.2023.

2. Notice on this petition was issued on 16.04.2025.
3. Status report dated 03.07.2025 has been filed by the State.



4. Nominal Roll dated 17.07.2025 has also been received from the Jail Superintendent.
5. The court has heard Mr. Akshay Bhandari, learned counsel for the petitioner; and Ms. Shubhi Gupta, learned APP for the State.
6. Mr. Bhandari has submitted, that the petitioner has been implicated in the subject FIR on the basis of the disclosure statement of one Praveen, who is alleged to have stated as under:

कर जी। इस घ-घ से लब्ध की गई है।
property बना ली है। मैं मोहन को जमाना लगाया
से, गैर-इ निवासी को अंग्रेजियुनी से व. अभ्यास,
को बाबर, हरिभावा से पकड़ा रक्ता है।

7. It is submitted, that the alleged disclosure statement of Praveen shows that the Investigating Officer had reason to believe that contraband could be recovered from the petitioner; whereafter a notice under section 50 of the NDPS Act was served upon the petitioner; a search was conducted; and 360 grams of heroin was allegedly recovered from his car.
8. Mr. Bhandari has pointed-out, that as would be seen from GD Entry No.0160A dated 17.11.2022 recorded by the police, the petitioner was apprehended from Jharoda Kalan, Delhi at about 05:40 p.m. Counsel has submitted, that it be noted that as per communication dated 30.10.2024 received from the Positional Astronomy Centre, Kolkata the sunset time in that area on 17.11.2022 was 17:28 hours, i.e., 05:28 p.m., and therefore clearly, the search was conducted *after sunset*. However, it has been argued, that the record shows that despite the



search having being conducted after sunset, the Investigating Officer did not record the “grounds of his belief” for conducting such search, which is a violation of the second proviso to section 42(1) of the NDPS Act.

9. Attention in this behalf is drawn to the second proviso to section 42(1) of the NDPS Act, which reads as under:

42. Power of entry, search, seizure and arrest without warrant or authorisation.— (1)

* * * * *

Provided further that if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(emphasis supplied)

10. It has further been pointed-out, that since the Investigating Officer did not record the “grounds of his belief”, as required under the second proviso to section 42(1) of the NDPS Act, a copy of the same was also not sent to the immediate official superior, which is also in breach of the requirement under section 42(2) of the NDPS Act.

11. Section 42(2) of the NDPS Act reads as under:

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior.

(emphasis supplied)

12. Furthermore, Mr. Bhandari has drawn attention to the statement of the concerned ACP recorded on 10.01.2023 under section 161 of the Code of Criminal Procedure 1973 (‘Cr.P.C.’), to submit that the authorisation given by the ACP under section 41 of the NDPS Act was only with



regard to information received on 15.11.2022 in respect of another co-accused Umesh Singh; and no authorisation was issued by the ACP in relation to the petitioner. A copy of ACP's statement dated 10.01.2023 recorded under section 161 of the Cr.P.C. had been handed-up in court on 03.02.2026; and the same is taken on record.

13. It has been pointed-out that though the Investigating Officer had *forwarded* the disclosure statement of co-accused Praveen to the ACP, the ACP had merely recorded that he had "seen" the same and had directed that it be placed on record; but the ACP did not give any authorisation for the search of the premises or for the arrest of the petitioner.
14. Reliance in this behalf has also been placed on the cross-examination of PW-1 (Reader to the ACP) recorded on 06.02.2025, whereby the said witness has categorically stated that after receiving the disclosure statement of Praveen, no search authorisation was issued by the ACP.
15. It has been submitted, that it is settled law that where an Investigating Officer is not acting under section 41 of the NDPS Act with requisite authorisation, he is bound to comply with section 42 of the NDPS Act.
16. However, it has been submitted that in the present case, the I.O. has acted in violation, both of section 41 as well as the second proviso to section 42(1) of the NDPS Act.
17. That apart, Mr. Bhandari has submitted, that while the petitioner has been in custody from 17.11.2022, and has thereby undergone more than 3½ years in judicial custody, only 01 out of 29 prosecution witnesses has been examined so far; and the trial is likely to take a long time to be completed; and detaining the petitioner in custody any further would



defeat his right to speedy trial under Article 21 of the Constitution of India. It has been argued, that in any case, it now stands settled by the Supreme Court that where there is delay in trial, the constitutional right of an accused to speedy trial would prevail over any statutory embargo on grant of bail, namely in this case, the twin conditions contained in section 37 of the NDPS Act.¹

18. Mr. Bhandari has argued that co-accused Jaipal has been granted regular bail by this Bench *vidé* order dated 09.01.2025 passed in BAIL APPLN. No. 3729/2024.
19. On the other hand, opposing the grant of bail, Ms. Shubhi Gupta, learned APP has submitted, that since commercial quantity of heroin (more than 250 grams) was recovered from the petitioner, section 37 of the NDPS Act would come into play.
20. Learned APP has further submitted, that the prosecution is relying not just on CDR connectivity between the petitioner and co-accused Jaipal Singh, but also on their conversations, which were in fact intercepted. It has been argued that on forensic examination, the petitioner's voice has matched with the voice in those conversations; and the transcripts of those conversations, copies of which have been filed, show that the petitioner was transacting with Jaipal and some other co-accused persons in relation to dealing in contraband.
21. It has been submitted that the last conversation between the petitioner and co-accused Jaipal Singh happened on 12.11.2022, that is just a few days prior to the commission of the offence on 15.11.2022, in which

¹ *Mohd. Muslim alias Hussain vs. State (NCT of Delhi)*, 2023 SCC OnLine SC 352 citing *Union of India vs. K.A. Najeed*, (2021) 3 SCC 713



conversation the petitioner is found discussing specific quantities of 'सामान' with the said co-accused.

22. Upon a conspectus of the submissions made, and the documents on record, the following considerations weigh with the court at this stage:

22.1. Since the alleged recovery of contraband (heroin) from the petitioner is claimed to be of 360 grams, which is 'commercial quantity' (the threshold being 250 grams), the rigours of section 37 of the NDPS Act would be attracted in the present case;

22.2. However, the record shows that recovery of contraband was allegedly made from the petitioner *after sunset* since in GD Entry dated 17.11.2022, the I.O. has recorded that the petitioner was apprehended at about 05:40 p.m.; and according to the meteorological department report, as furnished *vide* communication dated 30.10.2024, on 17.11.2022 the sunset time was 05:28 p.m. In view thereof, the I.O. was mandated to comply with the requirements of the second proviso to section 42(1) of the NDPS Act, and failing that with section 41(2) of the NDPS Act.

22.3. No record has been produced to show that the I.O. recorded the "grounds of his belief" as required in the second proviso to section 42(1) of the NDPS Act. Accordingly, no such grounds of beliefs were forwarded to the I.O.'s immediate superior official, as is required under section 42(2) of the NDPS Act, either.

22.4. Furthermore, no record has been produced to show that the I.O. sought any authorization for search of the premises or for arresting the petitioner, as is mandated by section 41(2) of the NDPS Act. The ACP's note on the disclosure statement of co-accused



- Praveen, basis which the petitioner is stated to have been arrested, only records that the statement has been “seen” by the ACP, but the ACP does not appear to have given any authorisation for arresting the petitioner. In addition, in his cross-examination recorded on 06.02.2025, the Reader to the ACP has categorically stated that after receiving the disclosure statement of Praveen, no search authorization was issued by the ACP.
- 22.5. Also, in his statement recorded on 10.01.2023 under section 161 Cr.P.C., which is part of the case diary, the ACP expressly states that he had authorized the I.O. for search, seizure, and apprehension of co-accused Umesh. Nowhere does the ACP affirm that he had granted any authorization as required under section 41 of the NDPS Act for the petitioner’s arrest.
- 22.6. Moreover, the record also shows, that the petitioner has been in judicial custody for more than 02 years and 07 months as of 10.07.2025, which would make more than 03 years as of date; and only 01 out of 29 prosecution witnesses has been examined so far. Clearly therefore, the possibility that trial would be completed anytime soon, is extremely remote.
23. It needs no reiteration that Chapter V of the NDPS Act, of which sections 41 and 42 comprise an important part, sets-out the procedure mandated by the Legislature for entry, search, seizure and arrest in relation to offences under that statute. The granular detail in which the Legislature has worded the said provisions shows the significance that the Legislature intended to attach to the procedures comprised therein.



24. Considering the serious consequences that attach to offences under the NDPS Act, the Legislature, in its wisdom, has thought it appropriate to meticulously provide for the requirement of authorisation from superior officials for entry, search, seizure and arrest, while at the same time allowing for entry, search, seizure and arrest at times when it may not be practicable or desirable to await such authorisation *subject however* to other very specific requirements that must be adhered-to at such times. The Legislature has therefore ring-fenced the power of such entry, search, seizure and arrest, to ensure that those acts are not conducted wantonly.
25. In keeping with the celebrated principle of *Nazir Ahmed vs. King Emperor*,² where the law gives the power to do a certain thing in a certain way, it must be done only in that way, or not at all.
26. In view of the foregoing facts and circumstances, this court is inclined to grant to the petitioner – *Mohan Babu Gupta s/o Om Sharan Gupta* – *regular bail* pending trial, subject to the following conditions:
- 26.1. The petitioner shall furnish a personal bond in the sum of Rs.50,000/- (Rs. Fifty Thousand Only) with 02 sureties in the like amount from family members, to the satisfaction of the learned trial court;
- 26.2. The petitioner shall furnish to the Investigating Officer a cellphone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;

² 1936 SCC Online PC 41



- 26.3.If the petitioner has a passport, he shall surrender the same to the learned trial court and shall not travel out of the country without prior permission of the learned trial court;
- 26.4.The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of case. The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial; and
- 26.5.In case of any change in his residential address/contact details, the petitioner shall promptly inform the I.O. in writing.
27. Since the petitioner is facing trial and would therefore be appearing before the learned trial court from time-to-time, it is not considered necessary to impose a reporting requirement as a condition of regular bail.
28. Nothing in this order shall be construed as an expression of opinion on the merits of the pending matter.
29. A copy of this order be sent to the concerned Jail Superintendent *forthwith*.
30. The petition stands disposed-of in the above terms.
31. Other pending applications, if any, are also disposed-of.

ANUP JAIRAM BHAMBHANI, J.

MARCH 28, 2026

HJ/ss