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

\# **CNR No. DLHC010406192026**

\+ BAIL APPLN. 3583/2026, CRL.M.A. 26675/2026

ABHISHEK KUMAR .....Petitioner

Through: Ms. Swati Khanna, Mr. Mohd. Yasin and Mr. Irfan Ali, Advocates.

versus

GNCT DELHI .....Respondent

Through: Mr. Tarang Srivastav, APP for State.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% 17.11.2026

1. The present application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023[1] seeks regular bail in FIR No. 355/2025, registered at P.S. Moti Nagar, Delhi, under Sections 18 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985[2]. Following receipt of the FSL report, the Trial Court framed a charge against the Applicant under Section 21(c) of the NDPS Act on 9th February, 2026.

2. The Applicant's earlier bail applications were dismissed by the Trial Court on 15th September, 2025 and 19th March, 2026, respectively. This is his first bail application before this Court.

3. The prosecution case originates from secret information received on 13th July, 2025, concerning the proposed supply of opium near MCD

[1] "BNSS"

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Pratibha School, Basai Darapur. According to the chargesheet, the raiding party reached the spot and, at about 2:32 p.m., observed two persons standing near the school gate. One of them, subsequently identified as a Child in Conflict with Law[3], was carrying a blue backpack, which he allegedly removed from his back and handed to the Applicant. Both were thereafter apprehended. The police claim that the backpack was found in the Applicant's right hand and, upon examination, was found to contain two bundles weighing 800 grams and 355 grams, respectively, aggregating 1.155 kilograms. The field-testing kit indicated that the substance was suspected crude opium.

4. The FSL report dated 3rd December, 2025 subsequently detected morphine, codeine, thebaine, papaverine and other constituents, including acetaminophen, tramadol and dicyclomine. The morphine content was reported as 25.6% and 24.3% in samples A1 and B1, respectively. On the basis of this report, the prosecution maintains that the seized material constitutes an opium derivative and that the quantity recovered is commercial.

5. Counsel for the Applicant questions the reliability of the alleged recovery, principally on account of the delay in commencing videography and the condition in which the seized material was subsequently produced before the Magistrate. It is submitted that, although the Applicant was apprehended at approximately 2:40 p.m., the first recording commenced considerably later. Counsel further relies upon the order dated 28th July, 2025, recording leakage from both bundles and damage to the container in

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[2] "NDPS Act"
[3] "CCL"

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which they had been kept. The samples were also found leaking when received by the FSL. It is argued that these circumstances, coupled with the absence of independent witnesses and the fact that the backpack was originally being carried by the CCL, raise serious doubts concerning the recovery and the integrity of the samples. Counsel also points to the Applicant's continued incarceration and the absence of progress in the trial.

6. Mr. Tarang Srivastava, APP for the State, opposes the application. He submits that the field-testing kit provided only a preliminary indication and that the subsequent laboratory examination establishes the presence of an opium derivative in commercial quantity. As regards videography, he explains that the presence of a juvenile necessitated calling a Juvenile Welfare Officer, who arrived at approximately 3:24 p.m., following which the search proceedings were undertaken. It is submitted that the proceedings were recorded through the e-Sakshya application and that the videos have been produced. The State attributes the leakage to the incisions made during preliminary examination and the prevailing heat. It is further emphasised that sampling was undertaken in the presence of a Magistrate and the seals on the samples were found intact by the FSL.

7. The Court has considered the submissions and examined the material placed on record. Since the prosecution alleges recovery of commercial quantity, the restrictions under Section 37 of the NDPS Act require consideration. The Supreme Court in ***Narcotics Control Bureau v. Kashif***[4] has reiterated that procedural irregularities relating to search and seizure do not, by themselves, justify bail. The Court must examine the material as a whole and record its satisfaction on the twin conditions prescribed by

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Section 37.

8. The first concern relates to the circumstances in which the backpack allegedly came into the Applicant's possession. According to the prosecution itself, the backpack was initially being carried by the CCL and was handed to the Applicant shortly before both were apprehended. This alleged transfer is the starting point of the case concerning the Applicant's possession of the seized material. No independent public witness was associated with the recovery, although the police state that attempts were made to secure their participation.

9. The prosecution places the apprehension at approximately 2:40 p.m. The earliest video relied upon is stated to bear a timestamp of about 3:23 p.m., whereas the supplementary status report refers to the first scene-of-crime recording at approximately 3:42 p.m. The explanation concerning the arrival of the Juvenile Welfare Officer accounts for postponement of proceedings involving the child. It does not fully explain the interval between the initial apprehension and commencement of recording, particularly as regards the handling of the backpack. The original seizure account describes the backpack as being held in the Applicant's right hand when the FSL team examined its contents, although the team arrived only at about 5:40 p.m. The prosecution's narration does not clearly identify how the backpack was secured and handled during the intervening period.

10. The mere fact that videography commenced after apprehension does not *ipso facto* render the recovery unlawful. Nor does the absence of independent witnesses necessarily invalidate a search conducted by police officials. Nevertheless, where the alleged transfer of the backpack forms an

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[4] 2024 INSC 1045

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important link connecting the Applicant with the contraband, the absence of contemporaneous recording of that event and the uncertainty concerning the subsequent handling of the bag are relevant to the assessment of the recovery at this stage. In these proceedings, the Court is not required to conduct a mini trial to comment on the veracity of the prosecution account. Its reliability will be tested upon examination of the witnesses and the electronic evidence at trial.

11. The condition of the seized material raises a further concern. The order dated 28th July, 2025 records that both bundles had leaked and that the substance was found splattered on the inner walls of the common container. The Magistrate also noticed damage and a hole in the container. Significantly, the two samples attributed to bundle A were drawn from the leaked material lying inside that container, rather than directly from bundle A. When substance had leaked from both bundles into the same container, the manner in which the collected material was attributed specifically to bundle A calls for explanation. The requirement of representative sampling under Rule 11 of the NDPS (Seizure, Storage, Sampling and Disposal) Rules, 2022 is relevant in this context.

12. There are, undoubtedly, circumstances supporting the prosecution. The samples attributed to bundle B were drawn directly from that bundle in the presence of the Magistrate. Both samples reached the FSL with the court seals intact and tallying with the specimen seals. The chemical examination also establishes the constituents of the material actually tested. These are significant considerations, particularly because bundle B was itself reported to weigh 355 grams. The Court is conscious that, if the prosecution establishes its classification as an opium derivative and the requisite

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possession, this bundle may independently support the allegation of commercial quantity. The irregularity concerning sample A cannot, therefore, be treated as conclusive of the entire case.

13. At the same time, the laboratory findings do not independently establish the circumstances in which the backpack came into the Applicant's possession. Further, the fact that the court seals remained intact after sampling does not resolve every question concerning the earlier condition and handling of the seized substance. The explanation of leakage offered by the State may ultimately be accepted, but the Magistrate's observations and the manner in which sample A was drawn cannot be disregarded at the present stage. The distinction between the preliminary description of the substance as crude opium and the prosecution's subsequent reliance on the FSL findings for treating it as an opium derivative is also a matter which will require examination with reference to the statutory definitions and the evidence led at trial.

14. The Applicant was approximately 19 years old at the time of the incident and has remained in custody since 14th July, 2025. The investigation is complete and charges have been framed. Twenty-two prosecution witnesses have been cited, and it is stated that none has yet been examined. The nominal roll reflects satisfactory jail conduct and no previous criminal involvement. Although the period of detention and the pace of trial cannot, by themselves, overcome Section 37, they are relevant when considered alongside the concerns arising from the prosecution's own record.

15. The Court has evaluated these circumstances cumulatively. The concerns are not confined to a technical departure in the sampling procedure. They extend to the evidence of possession, the chronology and

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documentation of the recovery, and the condition of the material subsequently subjected to examination. Having regard to these features, this Court is satisfied, for the limited purpose of Section 37 of the NDPS Act, that there are reasonable grounds for believing that the Applicant is not guilty of the offence alleged against him. This is a tentative assessment of the material presently available and does not constitute a finding on the admissibility, credibility or ultimate evidentiary value of any prosecution evidence.

16. As regards the second condition under Section 37, the Applicant has no reported criminal antecedents, his conduct in custody has been satisfactory, and the State has not identified any specific previous conduct indicating a propensity to commit similar offences. Having regard to these circumstances and the conditions proposed to be imposed, the Court is also satisfied that he is not likely to commit an offence while on bail.

17. Accordingly, the application is allowed. The Applicant, Abhishek Kumar @ Avashak, shall be released on regular bail in FIR No. 355/2025, registered at P.S. Moti Nagar, Delhi, upon furnishing a personal bond in the sum of ₹25,000/- with one surety of the like amount to the satisfaction of the Trial Court, subject to the following conditions:

(i) The Applicant shall appear before the Trial Court on every date of hearing, unless exempted in accordance with law.

(ii) He shall furnish his current residential address and mobile number to the Investigating Officer and the Trial Court, and shall intimate any change without delay.

(iii) He shall not directly or indirectly contact, threaten, influence or induce any prosecution witness, or interfere with the evidence.

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(iv) He shall not leave India without prior permission of the Trial Court and shall surrender his passport, if any, before that Court.

(v) He shall not involve himself in any criminal activity during the period of bail.

18. In the event of breach of any of the above conditions, the State shall be at liberty to seek cancellation of bail in accordance with law.

19. It is clarified that the observations made herein are confined to the determination of the present bail application. The Trial Court shall decide the case independently, on the evidence adduced before it, uninfluenced by these observations.

20. The application stands disposed of in the above terms.

SANJEEV NARULA, J

NOVEMBER 17, 2026
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