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

% ***Date of Decision : 29.10.2026***

\# **CNR No.DLHC010445342026**

\+ **BAIL APPLN. 3931/2026**

DEEPAK @ KAJA .....Petitioner

Through: Mr. Suraj Prakash Sharma, Mr. Pranav Prakash Sharma, Mr. Ankit Sharma, Mr. Tarun Goel, Advs.

versus

THE STATE (NCT OF DELHI) & ANR. .....Respondents

Through: Ms. Priyanka Dalal (APP)
SI Sohan (ANS/ONT)

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J. (*ORAL*)

CRL.M.A. 29048/2026 (Exemption from filing certified copies of annx.)

1. Allowed, subject to all just exceptions.

2. The application stands disposed of.

BAIL APPLN. 3931/2026

3. The applicant/petitioner, *via* the present application filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding to Section 439 of the Code of Criminal Procedure, 1973), seeks regular bail in FIR No. 473/2023, dated 29.04.2023, registered at P.S. Shahbad Dairy, Outer-North (Delhi), under Sections 21/25/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter "*NDPS Act*").

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4. The applicant's/petitioner's first bail application in this Court (Bail Appln. 1717/2026) was dismissed as withdrawn *vide* order dated 10.08.2026, in the following terms:

> *"1. The affidavit, which the applicant has filed in compliance of the directions given by the Hon'ble Supreme Court in Zeba Khan Vs. State of U.P. & Others: 2025 SCC OnLine SC 3127, is completely cryptic and unspecific.*
> *2. In relation to the criminal antecedents, the applicant has, merely, claimed as under:-*
> *"it is submitted that there are several criminal antecedents of applicant."*
> *3. Sh. Sharma, learned counsel for the applicant acknowledges the fact that the affidavit is not in the prescribed and desired manner.*
> *4. He therefore, does not press the present application and seeks liberty to file bail application afresh by giving affidavit in a proper manner, while specifying the previous antecedents and details of the pending cases.*
> *5. The application is, accordingly, disposed of, as not pressed.*
> *6. Liberty, as prayed, is granted.*
> *7. All rights and contentions of the parties are reserved."*

5. By way of the said order, liberty was granted to the applicant/petitioner to file afresh. Subsequent thereto, the applicant/petitioner filed a regular bail application before the Ld. trial Court. The same came to be dismissed *vide* order dated 01.09.2026 with the following observations:

> *"5. In the present case, the allegations against the applicant are that he along with co-accused Beena was apprehended and commercial quantity of contraband i.e. 260 Grams of heroin were recovered from their house.*
> *6. The* ***quantity recovered from the applicant falls under commercial nature and therefore, bar of section 37 NDPS Act is applicable with full force. The twin conditions do not seem to be satisfied*** *in the present case as there is no reasonable ground to believe that the applicant has not committed the alleged crime.*
> *7. The* ***case of applicant is also not in parity with the co-accused persons Kamla, Beena, Usha Devi and Danish*** *who have been*

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19:09:08

granted bail by the Hon'ble High Court of Delhi. Every case has to be dealt with according to its own facts & circumstances which includes the nature and role played by the accused persons, previous antecedents and other factors.
8. The ***applicant is found involved in 14 previous criminal cases which involves 4 cases of NDPS Act and he is also reported to be a BC of P.S. Sultan Puri****, which reflects the propensity for commission of crime again by the applicant.*
9. Accordingly, considering the facts & circumstances of the case, this court is not inclined to grant bail to the applicant at this stage. The application is hereby dismissed."

(emphasis supplied)

6. *Vide* the present application, the applicant/petitioner assails the aforesaid order, dated 01.09.2026 and seeks regular bail.

7. The prosecution's case is that, following the recovery of heroin from co-accused Kamla, Shakti, and Naresh, a raiding team on 18.09.2024 arrived at the residence of the petitioner, *i.e.*, Deepak @ Kaja and his wife Bina, *i.e.*, House No. D-2/70, Sultanpuri, Delhi, and recovered 260 grams of heroin (along with the transparent wax bag) from a polythene bag hidden within a pair of shoes. Both were consequently arrested. Subsequently, a Supplementary Chargesheet dated 07.03.2025, arraying the applicant/petitioner as an accused, was filed. On 08.07.2025, charges were framed against the applicant/petitioner under Sections 21(c)/25/29 of the NDPS Act. Currently, the trial is at the stage of the Prosecution Evidence (PE), and the next date of hearing is 08.10.2026.

8. By order dated 07.04.2026, a Coordinate Bench of this Court in ***Bina v. The State NCT of Delhi*****, Bail Appln. 1340/2026** granted bail to the co-accused Bina on the following terms:

"*11. Considering the overall facts and circumstances of the present case, including* ***the period of custody already undergone by the***

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> ***applicant, the fact that the trial is yet to commence and is likely to take considerable time to conclude, and also taking into account that similarly placed co-accused persons*** *have already been granted regular bail by the Coordinate Bench, this Court is of the opinion that, for the limited purpose of bail, the* ***rigors of Section 37 of NDPS Act stand satisfied****."*
>
> (emphasis supplied)

9. It must be noted that bail to the co-accused Bina was granted, despite the submission of the State that she was involved in two other cases under the NDPS Act. Submissions to this effect were recorded as follows in the aforesaid order dated 07.04.2026:

> *"7. On the other hand, the learned APP for the State strongly opposes the present bail application and submits that the allegations against the applicant are serious in nature and case involves recovery of commercial quantities of narcotic substances.* ***It is argued that the applicant cannot claim parity with co-accused Kamla since the other cases registered against Kamla were under the Excise Act and not under the NDPS Act, whereas the present applicant is involved in two other cases under the NDPS Act along with co-accused.*** *It is therefore prayed that the present bail application be dismissed."*
>
> (emphasis supplied)

10. Learned counsel for the applicant/petitioner submits that the recovery of 260 grams of heroin was a joint recovery from the house of the applicant/petitioner and co-accused Bina (applicant's/petitioner's wife). This fact was recorded by this Court in paragraph 5 of the aforesaid order dated 07.04.2026. It is also submitted that the allegations against both the applicant/petitioner and co-accused Bina are identical. To this effect, it can be noted that the Ld. ASJ/Special Judge (NDPS), North, Rohini Courts, Delhi, in order dated 08.07.2025, in SC No. 698/2023 ('*State v. Kamla & Ors.*'), while framing charges, considered the case of Bina and Deepak

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19:09:08

collectively, in the following terms:

> "*1. It is argued on behalf of accused Beena and Deepak that they were not found in possession of heroin and grounds of arrest were not explained to them prior to their arrest. It is further argued that the recovered contraband has been planted upon them. Hence, no offence against them is made out against accused Beena and Deepak.*"

11. Learned APP for the State opposes the plea for parity on the ground that the applicant/petitioner has several other cases, including four (4) cases under the NDPS Act, pending against him, as opposed to the co-accused Bina's two (2) cases under the NDPS Act. The Supreme Court in ***Sagar v. State of UP*, 2025 INSC 1370**, held that parity, although not the sole factor, is a relevant consideration in deciding bail applications. The Supreme Court observed the following:

> "*14. What flows from the above judgments, which have been referred to, only to the limited extent indicated above, is that the High Courts speak in one voice that parity is not the sole ground on which bail can be granted. That, undoubtedly, is the correct position in law. The word 'parity' is defined by the Cambridge Dictionary as "equality, especially of pay or position."* ***When weighing an application on parity, it is 'position' that is the clincher. The requirement of 'position' is not met only by involvement in the same offence. Position means what the person whose application is being weighed, his position in crime, i.e., his role etc.*** *There can be different roles played – someone part of a large group, intending to intimidate; an instigator of violence; someone who throws hands at the other side, instigated by such words spoken by another, someone who fired a weapon or swung a machete –* ***parity of these people will be with those who have performed similar acts****, and not with someone who was part of the group to intimidate the other by the sheer size of the gathering, with another who attempted to hack away at the opposer's limbs with a weapon.*"
>
> (emphasis supplied)

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Signing Date:30.10.2026
19:09:08

12. The Supreme Court in ***Sagar (Supra)*** affirmed and emphasised the following holding of this Court in ***Harbhajan Singh v. State,*** **2016 SCC OnLine Del 4920**:

> "*15. … In this regard, this Court thinks fit to reiterate the settled principle that in a criminal jurisprudence, every case stands on different footings and no straightjacket formula can be adopted in the facts of each case. No doubt, the weight of judicial parity should be followed, but on the other hand, this Court is of the conscious opinion that the word 'parity' connotes a state when a person is placed on the same footing as of the other person. This court is also of the opinion that that parity cannot be the sole ground for granting bail in a case where the bail applications of other co-accused whose bail applications had been allowed and are released on bail. It is purely a discretion of the court. Before granting or refusing bail, the court must satisfy itself after considering the material placed on record and further developments in the investigations or otherwise and other peculiar circumstances of each case, which show that there are sufficient grounds for releasing the applicant on bail* ***If on examination of any case, it transpires that the case of the applicant before the court is identically similar to the accused on facts and circumstances, who has been bailed out, then the desirability of consistency will require that such an accused should be also released on bail***."

(emphasis supplied)

13. Thus, on the touchstone of parity, the petitioner is entitled to the benefit of the same considerations which weighed with the Court *qua* accused Bina.

14. The learned APP for the State also opposes the application on the ground that the recovery is of 260 grams of heroin, which is a commercial quantity. It is contended that the rigours of Section 37 of the NDPS Act shall, accordingly, be applicable and the same has not been satisfied in the present case. *Contra*, the learned Counsel for the applicant/petitioner submits that the quantity allegedly seized, *i.e.*, 260 grams, is marginally

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Signing Date:30.10.2026
19:09:08

above the commercial quantity, *i.e.*, 250 grams, and therefore the rigours of Section 37 of the NDPS Act can be relaxed.

15. In this regard, reference is apposite to the decision of a Coordinate Bench of this Court in ***Vinay Sharma v. State Govt. of NCT of Delhi,*** **2025:DHC:6358**, wherein the following was remarked:

> "*7.* ***Moreover, the quantity of Ganja allegedly recovered from the applicant is only marginally above the threshold of commercial quantity under the NDPS Act.*** The commercial quantity for Ganja is 20 kilograms, whereas the alleged recovery in the present case is 21.508 kilograms. ***In such a scenario, the strict application of the rigours of Section 37 of the NDPS Act may not be justified and warrants a more nuanced consideration.***"
>
> (emphasis supplied)

16. Another Coordinate Bench of this Court in ***Sunny v. State of NCT of Delhi,*** **2008/2026**, on 07.10.2026, has observed as follows:

> "*20. Admittedly, the recovery made from the applicant was 259 gms, which is* ***marginally above the commercial quantity, prescribed under the NDPS Act of 250 gms. In such circumstances, the strict application of the rigours of the NDPS Act may not be justified and warrants a more nuanced consideration***."
>
> (emphasis supplied)

17. Furthermore, the Punjab and Haryana High Court in ***Gurprabh Singh @ Prince v. State of Punjab,*** **2025:PHHC:027809**, observed as under:

> "*6. In the cases of 'Sukhchain Singh @ Manga Versus State of Punjab, CRM-M-7857-2022 decided on 04.04.2022, Pardeep Singh versus State of Punjab, CRM-M-46244-2022 decided on 19.01.2023, Hari Yadav @ Haiya versus State of Punjab (CRM-M-37645-2021)' decided on 11.11.2022, 'Jang Kanwar Versus State of Punjab (CRM-M-53415-2021)' decided on 19.01.2022, ' Shankar Prashad Chanau Versus The State of Punjab, CRM-M-24090-2020, decided on 27.08.2020, Gurpreet Kumar Versus State of Punjab, CRM-M-17021-2021, decided on 31.08.2021, Salim*

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Signing Date:30.10.2026
19:09:08

Versus State of Haryana, CRM-M-42436-2020, decided on 24.02.2021, Gagandeep Versus State of Punjab, CRM-M-3055-2021, decided on 27.01.2021, Gurpreet Singh @ Gopi Versus State of Punjab, CRM-M-41039-2019, decided on 26.02.2020, Dalbara Singh Versus State of Punjab, CRM-M-47880-2022 decided on 16.01.2023', and Vivek Watts versus State of Punjab, CRM-M-13791-2022 decided on 15.02.2023, ***where the recovery from the accused was marginally above the commercial quantity for the respective contraband in each case, the Court granted bail to the accused therein****.*

7. In the present case, the alleged recovery from the petitioner is of 261 grams of a narcotic substance containing the sale of 'Tramadol Hydrochloride' which is ***marginally above the commercial quantity of 250 grams. The petitioner is a first time offender with no other case under the NDPS Act registered against him. In this situation, the provisions of Section 37 of the NDPS Act can be relaxed to an extent*** *and the case of the petitioner can be considered for the grant of bail, moreso, when he is in custody since 13.09.2023 but none of the 13 prosecution witnesses have been examined so far and a co-accused has already been granted the similar relief."*

(emphasis supplied)

18. It is noticed that in ***Abetoli Awomi v. The State NCT of Delhi,* 2026:DHC:1497**, a somewhat different tone was struck by a coordinate Bench of this Court. It was observed as under:

"*12. Allegedly, recovery of 57 grams of amphetamine drug has been effected from the possession of the applicant, which prima facie exceeds the threshold of 50 grams for qualifying commercial quantity thereby bringing the case within the fold of the special restrictions engrafted for offences involving commercial quantity.* ***Therefore, there is a clear embargo on bail as provided under Section 37 of the NDPS Act, and the requirements therein are not mere empty formalities but constitute a legislative mandate which has to be considered where there is a recovery of commercial quantity and can only be relaxed on careful appraisal of the material.*** *Reference in this connection can be made to Union of India v. Ram Samujh [(1999) 9 SCC 429], Union of India v. Ajay Kumar Singh [2023 SCC OnLine SC 346] and Union of India v.*

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19:09:08

Vigin K. Varghese [2025 SCC OnLine SC 2440]."

(emphasis supplied)

19. This Court in ***Ashok Kumar @ Lala v. The State of NCT of Delhi,* 2024:DHC:7685**, has observed that "*it* ***would have to be examined in trial whether the quantity was in fact commercial or intermediate in nature****, in recovery*".

20. The position that emerges from a consideration of the dicta in the aforesaid judgments is that in a given factual context, the marginal difference between the extent of recovered quantity *vis-a-vis* commercial quantity can be a relevant aspect in ascertaining whether the rigours of the criterion statutorily incorporated in Section 37 of the NDPS Act, is satisfied or not.

21. The prism through which the matter is to be examined has been succinctly set out by the Supreme Court in ***Mohd. Muslim v. State (NCT of Delhi),* (2023) 18 SCC 166**, wherein it was, *inter alia*, observed as under:

> "*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***

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19:09:08

> ***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 [(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.*"
>
> (emphasis supplied)

This is relevant for the purpose of Section 37(1)(b)(ii) of the NDPS Act

22. In the present case, as has been brought out by the applicant, the recovery of 260 grams of heroin is marginally above the notified commercial quantity of 250 grams. It must be noted that, as per the Supplementary Chargesheet, 260 grams includes the weight of "*transparent wax bag*". The net weight of the seized contraband is not clearly borne out from the record.

23. With regard to the criminal antecedents of the applicant which has not resulted in conviction, the Supreme Court in ***Prabhakar Tewari v. State of U.P.*, (2020) 11 SCC 648**, held that several criminal cases against the applicant cannot automatically strip the applicant of his right to seek bail, it was observed as under:-

> "*7. …* ***The offence alleged no doubt is grave and serious and there are several criminal cases pending against the accused. These factors by themselves cannot be the basis for refusal of prayer for bail.*** *The High Court has exercised its discretion in granting bail to the accused Vikram Singh upon considering relevant materials. No ex facie error in the order has been shown by the appellant which would establish exercise of such discretion to be improper. We accordingly sustain the order of the High Court granting bail. This*

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Signing Date:30.10.2026
19:09:08

appeal is dismissed."

(emphasis supplied)

24. Furthermore, the concern that the applicant might engage in offensive/criminal conduct can be addressed by imposing stringent bail conditions.

25. What also weighs with this Court is that the applicant/petitioner has been in custody for more than two (2) years, with the trial far from concluding. In ***Man Mandal v. State of West Bengal*, 2023 SCC OnLine SC 1868,** where the seizure was commercial in nature, and the applicant had been incarcerated for about two years, and there was no prospect for the trial to be concluded soon, the Supreme Court, while granting bail, stated as under:

> "*6. Taking into consideration the fact that the petitioners have been incarcerated for a period of almost two years and the trial is not likely to be taken up for hearing in the immediate near future, we are inclined to grant bail to the petitioners.*"

26. In ***Rabi Prakash v. State of Odisha*, 2023 SCC OnLine SC 1109,** where a recovery of 247 kgs of Ganja was made, and the applicant had been in custody for more than three and a half years, the Court held as under:

> "*4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent - State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody.* ***The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.***"

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Signing Date:30.10.2026
19:09:08

(emphasis added)

27. Considering the aforesaid circumstances, the applicant is granted regular bail on furnishing a personal bond of Rs. 50,000 with one surety of the like amount to the satisfaction of the learned trial Court. The same shall be subject to the following conditions:

a. The applicant shall attend every hearing unless exempted by the trial Court.
b. The applicant shall not leave NCT of Delhi or travel out of the country without prior permission of the trial Court;
c. The applicant shall provide his permanent address to the trial Court, and also the address where he will be residing during the pendency of the case;
d. The applicant shall intimate the Investigating Officer (IO) and file an affidavit before the trial Court regarding any change in his residential address;
e. The applicant shall furnish his mobile number to the Investigating Officer (IO)/Station House Officer (SHO) concerned, which shall be kept in working condition at all times. The mobile number shall be kept switched on, with location services enabled at all times, and the same shall be shared with the IO. The mobile number shall not be changed without prior intimation to the IO during the pendency of the trial;
f. The applicant shall report to the IO as and when called for by the IO;
g. The applicant shall not directly or indirectly contact the

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Signing Date:30.10.2026
19:09:08

complainant, any prosecution witness, and their family members;

h. The applicant shall not directly or indirectly make any inducement, threat, or promise to any person acquainted with the facts of the case, or tamper with the evidence of the case, in any manner whatsoever;

i. The applicant shall not indulge in any criminal activity during the period of bail; and

j. The applicant shall report to the concerned SHO, on the first Monday of every month at 11:00 a.m. and be discharged by 12:00 noon, after recording his presence and completion of the necessary formalities.

28. In the case of any breach of the aforesaid conditions, the State shall be entitled to seek cancellation of bail.

29. Nothing stated hereinabove shall be construed as an observation on the merits of the case. The trial shall be decided on its own merits, without being influenced by any observation made in this order.

30. A status report has been handed over during the course of the hearing. The same is stated to have been filed in the Registry of this Court. Let the same be placed on record.

31. The petition is disposed of in the above terms.

SACHIN DATTA, J

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