



2026:DHC:779



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

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Reserved on: January 15, 2026
Pronounced on: January 31, 2026

+ **BAIL APPLN. 3346/2025**

MOHD. JABIR

.....Applicant

Through: Mr. U.A. Khan and Mr. Tushar
Upadhyay, Advocates.

Versus

THE STATE NCT OF DELHI

.....Respondent

Through: Ms. Meenakshi Dahiya, APP for State
with Ms. Vanshika Singh and Ms.
Divya Bakshi, Advocates
SI Karambir Singh Rawat, Anti
Narcotics Cell.

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

1. By virtue of the present application under *Section 483* of the Bharatiya Nagarik Suraksha Sanhita, 2023¹ read with *Section 439* of the Code of Criminal Procedure, 1973², the applicant seeks grant of regular bail in proceedings arising from FIR No.637/2020 dated 28.10.2020 registered under *Sections 21/29* of the Narcotic Drugs and Psychotropic Substances Act, 1985³ at PS: Bhalswa Dairy, Delhi.

2. As per FIR, on 27.10.2020 at about 07:45 PM, secret information was

¹ Hereinafter '*BNSS*'

² Hereinafter '*Cr.P.C.*'

³ Hereinafter '*NDPS Act*'

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received at the Narcotic Cell, Outer North District, Delhi that one person namely Wasim was going to supply heroin to one Mohd. Jabir/ applicant herein near Bhalswa Chowk between 09:30 PM to 11:30 PM. The same, at the instance of the ACP, Operations Cell, Outer North District was reduced to writing *vide* DD No.7 at 08:15 PM. During a raid conducted by the raiding team at Bhalswa Chowk, at around 09:45 PM, both Wasim and the applicant were identified by the secret informant, and Wasim was seen taking out a packet from his black bag and handing over the same to the applicant, at which point of time, both the said persons were apprehended. Notice(s) under *Section 50* NDPS Act were first served upon them, and they were then apprised of their rights to be searched in the presence of a Gazetted Officer or Magistrate, which they declined. Thereafter, the ACP was called to the spot, and upon search in his presence, two transparent polythene bags containing a light brown coloured powder, 500g heroin each, were recovered from each of them. Thus, both Wasim and the applicant were arrested, and FIR No.637/2020 dated 28.10.2020 was registered under *Sections 21/29* NDPS Act.

3. Subsequent thereto, the charge-sheet has been filed and *vide* order dated 23.05.2022 charges have also been framed against Wasim and the applicant under *Sections 21/29* NDPS Act by the learned Special Judge (NDPS), North District, Rohini Courts, Delhi⁴.

4. Though the applicant was granted bail *vide* judgement dated 28.03.2023 passed by this Court, however, the same was set aside by the

⁴ Hereinafter '*learned Trial Court*'



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Hon'ble Supreme Court *vide* order dated 02.12.2024 in Criminal Appeal No.4931/2024 filed by the State, and the bail granted stood cancelled, however, granting liberty to reapply for grant of bail in case of either a change in circumstances or prolongation of the trial due to reasons not attributable to the applicant.

5. Hence, the subsequent/ present application of the applicant seeking regular bail.

6. It is the prime contention of learned counsel for the applicant that though the judgement dated 28.03.2023 passed by this Court has been set aside by the Hon'ble Supreme Court, however, other judgements relying upon the said order dated 28.03.2023 have not been set aside. The learned counsel relies upon a judgment of a Co-ordinate Bench of this Court in ***Aabid Khan vs. State Govt. of NCT of Delhi***⁵. The learned counsel also submitted that learned Trial Court has also been following the said judgement dated 28.03.2023.

7. Placing reliance upon a decision of the Hon'ble Supreme Court dated 13.07.2023 in SLP CrI. No.4169/2023 entitled '***Rabi Prakash vs. State of Odisha***', the learned counsel submitted that since the applicant has already undergone a total period of *four and a half years* in custody, and the trial is not likely to conclude soon, the applicant deserves to be released on regular bail.

8. The learned counsel lastly submitted that since the surrender of the applicant pursuant to order dated 02.12.2024 passed by the Hon'ble Supreme

⁵ 2023:DHC:8675



Court cancelling the bail granted to the applicant, there has been prolongation of trial without any fault of the applicant. Drawing attention of this Court to the order sheets of the learned Trial Court, the learned counsel submitted that on 22.02.2024, cross-examination of PW5 to PW7 was deferred due to strike of lawyers, and lastly, on 07.01.2025, no PWs were examined due to unavailability of the public prosecutor. The delay, if any, in trial of the applicant not being attributable to him, the present application deserves consideration.

9. *Per contra*, learned APP for the State opposed grant of bail to the applicant and submitted that since there has been no change from the order of cancellation of bail by the Hon'ble Supreme Court *vide* order dated 02.12.2024, the applicant is not entitled to be released on bail.

10. Learned APP further submitted that 8 out of the 15 witnesses of the prosecution have already been examined, and the trial is expeditiously underway. Further, since the quantity of contraband recovered from the applicant, being 500g of heroin per person falls into the category of '*commercial quantity*' under the NDPS Act, the bar of *Section 37* thereof is applicable, and bail cannot be granted to the applicant.

11. Learned APP lastly submitted that the applicant committed the present offence while on bail in proceedings arising from FIR No.217/2019 also under *Sections 21/29* NDPS Act, which shows that he is a habitual offender, and if released on bail, has every likelihood of once again indulging in drug trafficking.

12. Heard learned counsel for the applicant and the learned APP for the



State and perused the Status Report and the other documents on record.

13. *Admittedly*, once the judgement dated 28.03.2023 has been set aside by the Hon'ble Supreme Court *vide* order dated 02.12.2024 holding that there was no violation of the mandate thereof, the same, in the considered opinion of this Court, will hardly come to any aid of the applicant.

14. Further, since the recovery of 500g of heroin per person herein undisputedly constitutes a '*commercial quantity*' under the NDPS Act, the rigours of *Section 37* of the NDPS Act are squarely applicable. Thus, as held by the Hon'ble Supreme Court in *Union of India vs. Niyazuddin SK & Anr.*⁶, 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, and mere delay in trial or prolonged incarceration cannot detract from the rigours of *Section 37* of the NDPS Act, if the Public Prosecutor has opposed the grant of bail.

15. This is a case wherein the applicant has been caught red-handed by the raiding team, and the same was whence the applicant was on bail in another FIR No.217/2019 under *Sections 21/29* NDPS Act. The same reflect repeated conduct of the applicant, and that too in *commercial quantity*. This Court is not convinced that the applicant has been able to cross either of the *twin conditions* hereinabove. Under such circumstances, prolongation of the applicant behind bars does not gain much significance. Even otherwise, a perusal of the order sheets before the learned Trial Court reflect that there is

⁶ 2017 INSC 686



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nothing which can be attributable on account of delay to anyone, much less the prosecution. In the interest of justice, considering the backlog of the pending cases before it, the learned Trial Court is requested to dispose of the case of the applicant as expeditiously as possible after proceeding in accordance with law without giving any unnecessary adjournments. Learned counsel for the parties are also requested to co-operate to that effect.

16. In view of the afore-going, the present application is dismissed in the aforesaid terms.

17. Needless to say, the observations made, if any, on the merits of the matter are purely for the purposes of adjudicating the present application and shall not be construed as expressions on the merits of the matter.

SAURABH BANERJEE, J.

JANUARY 31, 2026/Ab/RS

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