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

+ **BAIL APPLN. 3854/2025**

KALIMUDDIN

.....Petitioner

Through: Mr. Hirein Sharma, Advocate with
Mr. Vimal Tyagi, Mr. Balaji Pathak,
Mr. Sudhanshu Tyagi and Mr.
Rajendra Singh, Advocates.

versus

STATE NCT OF DELHI

.....Respondent

Through: Ms. Shubhi Gupta, APP for the State.
SI Subham, P.S.: Special Cell.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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05.05.2026

CRL.M.A. 30039/2025 (exemption)

Exemption granted, subject to just exceptions.

The application stands disposed of.

BAIL APPLN. 3854/2025

By way of the present petition filed under section 483 of the Bharatiya Nagarik Suraksha Sanhita 2023 ('BNSS'), the petitioner seeks regular bail in case FIR No. 77/2022 dated 08.04.2022 registered under sections 21/25/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act') at P.S.: Special Cell, Delhi.

2. Notice on this petition was issued on 09.10.2025.
3. Status report dated 04.11.2025 has been filed.



4. Nominal roll dated 16.02.2026 has been received from the Jail Superintendent.
5. The court has heard Mr. Hirein Sharma, learned counsel for the petitioner; as well as Ms. Shubhi Gupta, learned APP for the State.
6. By way of CRL.M.A. No. 1910/2026, the petitioner had sought to place on record an additional document, namely, a copy of notice issued under section 50 of the NDPS Act, under cover of an affidavit. The additional document is taken on record.
7. Mr. Sharma, learned counsel for the petitioner, has raised 04 contentions in support of the bail plea:
 - 7.1. *Firstly*, Mr. Sharma argues that the contraband, claimed to be 05 kgs of heroin is alleged to have been recovered from a *bag* that was carried by the petitioner; however, the notice purported to have been issued to the petitioner under section 50 of the NDPS Act was defective and invalid in law. Mr. Sharma submits, that it is the admitted position, that the petitioner is a resident of Nadia, West Bengal and is not conversant with either Hindi or English. This fact is recorded in chargesheet dated 30.08.2022 filed in the matter. Despite this however, it is submitted, that the notice under section 50 of the NDPS Act stated to have been served upon the petitioner was in Hindi, which is therefore not in compliance with the requirements of section 50 of the NDPS Act. It is submitted that this entitles the petitioner to be enlarged on regular bail.
 - 7.2. *Secondly*, counsel argues, that *vidé* order dated 24.01.2024 made in BAIL APPLN. No. 1128/2023, a Co-ordinate Bench of



this court has granted regular bail to co-accused Md. Washim Khan, despite the allegation that 102 gms of heroin was recovered from the said co-accused. It is argued, that even though the quantity allegedly recovered from the co-accused was an ‘intermediate’ quantity, since section 29 of the NDPS Act has been invoked in the present case, therefore the rigours of section 37 of the NDPS Act would apply equally to the co-accused; and yet, the Co-ordinate Bench has granted regular bail. The petitioner accordingly seeks parity with the co-accused.

7.3. *Thirdly*, it is submitted that though the chargesheet narrates that the alleged recovery of contraband was made based on the information received from a secret informer, meaning thereby that it was not a ‘chance recovery’, no videography of the alleged recovery was made nor was any public person joined as witnesses to the recovery. It is argued that, based on the observations of the Supreme Court in ***Shafhi Mohammad vs. State of Himachal Pradesh***¹ and of the Calcutta High Court in and ***Kalu S.K., In re***², a Co-ordinate Bench of this court has taken the view in BAIL APPLN. No. 2287/2022 that when recovery is made based on secret information, that is to say, information available prior to the making of recovery, the process of recovery should be videographed, to add to the

¹ (2018) 5 SCC 311

² 2022 SCC OnLine Cal 4556



credibility of the recovery. Counsel argues that the petitioner should be granted the relief of bail, since no videography was made in the present case.

7.4. *Fourthly, and most importantly*, it has been argued that the petitioner has been in judicial custody for more than 04 years as an under trial, but in the meantime only 04 out of 28 prosecution witnesses has been examined so far. It is accordingly the submission, that trial will take a very long time to conclude and the petitioner deserves to be set at liberty in compliance with what the Supreme Court has held in ***Mohd. Muslim vs. State (NCT of Delhi)***³.

8. On the other hand, Ms. Gupta, learned APP appearing for the State has opposed the grant of bail, submitting as follows:

8.1. In response to the contention that the notice under section 50 of the NDPS Act served upon the petitioner was defective, since it was not served upon him in a language that he understood, learned APP submits that since the recovery of 05 kgs of heroin was made *from a bag* that petitioner was carrying and not from his person, the validity or otherwise of the notice under section 50 of the NDPS Act is irrelevant.

8.2. Learned APP argues, that the petitioner is not entitled to parity with co-accused Md. Washim Khan since only an ‘intermediate’ quantity of heroin was recovered from the said co-accused, while ‘commercial’ quantity of 05 kgs of heroin

³ (2023) 18 SCC 166



was recovered from the petitioner (with the threshold for commercial quantity being 250 gms), for which reason the petitioner cannot be treated at par with the co-accused. It is submitted, that while granting bail to the co-accused, the Co-ordinate Bench has proceeded on the observation that there was no interception or transcription of any conversation between the petitioner and the co-accused, and that CDR details of the co-accused show that he had contacted the present petitioner on 01.03.2022 whereas the contraband was recovered later on 09.04.2022. It is submitted that therefore, the application of section 29 of the NDPS Act was not examined by the Co-ordinate Bench; and accordingly the rigours of section 37 of the NDPS Act have not been applied by the Co-ordinate Bench to the co-accused.

8.3. Learned APP has further submitted that though in *Bantu vs. State Govt. of NCT of Delhi*⁴, the Co-ordinate Bench has urged prosecuting agencies to photograph or videograph recoveries made, in order to add to their credibility, videography was not mandatory until the coming into force of the BNSS with effect from 01.07.2024, whereas in the present case recovery of contraband was made on 08.04.2022, when videography was not mandatory.

8.4. Learned APP also argues, that though only 04 out of 28 prosecution witnesses have so far deposed at the trial, that

⁴ (2024) SCC OnLine Del 4671



alone cannot be ground for granting bail to the petitioner; and the perceived delay in progress of trial may be addressed by this court issuing requisite directions to learned trial court for expeditious disposal of the matter.

9. In support of their respective contentions, learned counsel appearing for the parties have cited various decisions. Mr. Sharma has relied upon various judgements and orders of the Supreme Court, where delay in trial and continued incarceration of persons arrested under the NDPS Act for more than 02 years has persuaded the Supreme Court to grant bail. Ms. Gupta, on the other hand, has relied on a recent decision of the Supreme Court in ***Ranjan Kumar Chadha vs. State of Himachal Pradesh***⁵ to assert that the requirement of service of notice under section 50 of the NDPS Act does not apply when the recovery is made from a bag and not from the person of an arrestee. In support of her contention that delay in trial alone will not be sufficient ground for grant of bail, Ms. Gupta has relied upon the judgements of the Supreme Court in ***Union of India vs. Vigin K. Varghese***⁶ and ***State of Punjab vs. Sukhvinder Singh @ Gora***⁷.
10. Upon a conspectus of the submissions made by learned counsel for the parties, and based on the record available before this court, this court is of the following view:
 - 10.1. Insofar as the contention that the notice under section 50 of the NDPS Act served upon the petitioner was defective, for the

⁵ 2023 SCC OnLine SC 1262

⁶ SLP (CRL) No. 7768/2025

⁷ SLP (CRL) No. 5020/2026



reasons argued, this court would refrain from making any comment thereon, since the decision in the present bail petition would proceed on different considerations;

10.2. This court is not impressed by the contention raised by the petitioner that he is entitled to parity with co-accused Md. Washim Khan, since only an ‘intermediate’ quantity of heroin was recovered from the co-accused whereas ‘commercial’ quantity has been recovered from the petitioner. The said contention is accordingly rejected.

10.3. As for the argument, that since the alleged recovery of contraband was not photographed or videographed, it lacks credibility, again this court would refrain from making any comment, since any such comment may prejudice the trial. This court would only observe that the said contention is not being examined for purposes of the present bail petition.

10.4. What this court does consider relevant and material for the decision of the present bail plea is the question of delay in trial. It is a matter of record that the petitioner has been in judicial custody as an under-trial ever since his arrest on 08.04.2022; and as of date, the petitioner has served *more than 04 years* of custody. As seen from his nominal roll dated 16.02.2026, the petitioner’s jail conduct has been ‘satisfactory’ and he has no other criminal involvements. In the chargesheet the prosecution has cited 28 *witnesses* of which *only 04* have been examined so far. It is therefore anyone’s guess that trial would take several more years to conclude. The court is also informed that the next



hearing before the learned Special Judge is scheduled on 26.08.2026.

11. In these circumstance, this court would regrettably observe, that to expect the trial to conclude anytime soon, or to even direct expeditious conclusion of the trial and expect much results from such direction, remains a pipe-dream.
12. Most importantly, this court would remind itself of the observations of the Supreme Court in ***Union of India vs. K.A. Najeeb***⁸ as followed by the undersigned while sitting in Division Bench in ***Mohd Hakim vs. State (NCT of Delhi)***⁹, where the court has recognised that the right to speedy trial guaranteed under Article 21 of the Constitution must be *preserved*; and that the court must step-in early rather than late, to protect the right *before it is defeated* by the reason of prolonged undertrial incarceration. As observed in *Mohd Hakim*, this court must act as a ‘*doctor*’ and not as a ‘*coroner*’ and save the right to speedy trial from extinguishment rather than lament later-on that that constitutional guarantee under Article 21 of our Constitution should have been preserved.
13. In the circumstances, and *solely* on the ground of the evident delay in trial, including the extremely bleak prospect of conclusion of trial anytime soon, this court is persuaded to allow the present petition.

⁸ (2021) 3 SCC 713

⁹ 2021 SCC OnLine Del 4623



14. Accordingly, petitioner – ***Kalimuddin S.K. s/o Mansur S.K.***- is admitted to regular bail pending trial, subject to the following conditions:
- 14.1. 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;
- 14.2. 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;
- 14.3. 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;
- 14.4. 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
- 14.5. In case of any change in his residential address/contact details, the petitioner shall promptly inform the I.O. in writing.
15. 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.



16. Nothing in this order shall be construed as an expression of opinion on the merits of the pending matter.
17. A copy of this order be sent to the concerned Jail Superintendent *forthwith*.
18. The petition stands disposed-of in the above terms.
19. Pending applications, if any, stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

MAY 5, 2026/hb