



2026:DHC:777



* **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. 3991/2025, CRL.M.A. 31130/2025**

SUNNY @ PREM

.....Applicant

Through: Ms. Sushma Sharma, Mr. Girish
Kumar Sharma and Mr. Dhruv Kumar
Sharma, Advs.

Versus

THE STATE NCT OF DELHI

.....Respondent

Through: Ms. Meenakshi Dahiya, APP for State
with Ms. Vanshika Singh and Ms.
Divya Bakshi, Advocates and SI
Ramkishan, ANTF Crime Branch,
Delhi

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

JUDGMENT

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.93/2021 dated 22.05.2021 registered under *Sections 21/25* of the Narcotic Drugs and Psychotropic Substances Act,

¹ Hereinafter '*BNSS*'

² Hereinafter '*Cr.P.C.*'



2026:DHC:777



1985³ at PS: Crime Branch, Delhi.

2. As per FIR, on 22.05.2021 at about 06:10 PM, secret information was received at the Narcotics Cell, Crime Branch, Darya Ganj, Delhi that one person namely Sunny @ Prem/ applicant herein was going to supply a large quantity of heroin to some person near the Mazar situated at Ganda Nala, Sultanpuri between 07:30 PM to 08:30 PM. The same was reduced to writing *vide* DD No.34A at 06:33 PM at the instance of the ACP and a raiding team was constituted. During the said raid, after reaching the Mazar at Ganda Nala, at around 07:45 PM, the secret informant disclosed that the applicant was now going to supply heroin to some other person near DMS Booth, opposite H-Block, Vikas Puri Main Road between 08:30 PM to 09:30 PM. Hence, the raiding team reached the new location at about 08:20 PM. At about 08:40 PM, the applicant was identified by the informer standing close to his scooty, apparently waiting for someone. He was apprehended when he appeared to be leaving at about 08:45 PM. Notice under *Section 50* of the NDPS Act was served upon him in Hindi, and he was apprised of his rights to be searched in the presence of a Gazetted Officer or Magistrate, which he declined. Thereafter, the ACP was called to the spot, and upon search in his presence, one white plastic polythene bag was recovered from the left pocket of the applicant's trousers, containing a waxy pouch tied with a red rubber band, inside which there was a muddy-brown coloured powder, found to be 280g of heroin on testing. Thus, the applicant was arrested, and FIR No.93/2021 dated 22.05.2021 was registered under *Sections 21/25* NDPS

³ Hereinafter '*NDPS Act*'



2026:DHC:777



Act. The charge-sheet has also since been filed.

3. Though the applicant has raised various grounds, however, learned counsel for applicant primarily submitted that there is a non-disclosure of grounds of arrest to the applicant at the time of arrest. The arrest of the applicant was in violation of *Article 22(1)* of the Constitution of India, as evident from the Arrest Memo which only mentioned the case details and not the actual grounds of arrest, as also since the same was in English, whereas the applicant signed the said Memo in Hindi. The grounds of arrest were not communicated to the applicant in a manner that he could understand, and hence the procedure adopted was defective and ripe with constitutional infirmity. The learned counsel placed reliance upon ***Vihaan Kumar vs. State of Haryana***⁴ rendered by the Hon'ble Supreme Court and ***Md. Noor Mohammad vs. State of Assam***⁵ rendered by a learned Single Judge of the High Court of Assam.

4. The learned counsel submitted that as there is no departure entry of the ACP in violation of the mandate of *Section 42 NDPS Act*, relying upon ***Gulab Rai @ Chetan vs. State of NCT of Delhi***⁶ submitted that the due process of reduction of information to writing cannot be done away with. *Section 42 NDPS Act* was also violated by the recovery being made post-sunset without recording the reasons as to why a warrant could not have been obtained, as well as due to absence of independent third party witnesses and photography/ videography.

⁴ 2025 SCC OnLine SC 269

⁵ order dated 05.05.2025 in Bail Appln. No.3043/2024

⁶ order dated 19.01.2024 in Bail Appln. No.3840/2023



2026:DHC:777



5. The learned counsel lastly submitted that the applicant has already undergone over *three years* of custody, yet, only 11 out of 17 witnesses of the prosecution have been examined till date, and on the ground of prolonged incarceration, the applicant is entitled to grant of bail. As held by the Hon'ble Supreme Court in ***Prabhakar Tiwari vs. State of U.P. & Anr.***,⁷ merely because the applicant has criminal antecedents, it does not bar grant of bail.

6. Learned APP for the State, on the other hand, opposed the present application and submitted that due procedure was followed during the apprehension, search and arrest of the applicant, from service of Notice as per *Section 50 NDPS Act* to informing the applicant of the grounds of arrest in Hindi and recording the relevant provisions in the Arrest Memo. Further, the absence of departure entry of the ACP does not amount to anything, since such entries in the Rozmancha are only mandated for police officers from the rank of Constable to Inspector, and not for the Gazetted post of ACP.

7. Learned APP further submitted that the applicant is a habitual offender, with as many as *25 criminal cases* pending against him including snatching, Arms Act offences, motor vehicle theft, theft, attempt to murder, hurt, eve teasing and other NDPS Act offences. In fact, not only has he been declared Proclaimed Offender by the Rohini Court, New Delhi in proceedings arising out of FIR No.277/2010 at PS: Begumpur, Delhi, he was also absconding in proceedings arising out of FIR No.256/2021 at PS: Punjabi Bagh, Delhi, and he has committed repeated criminal activities while on bail. Details of *24 other FIRs* against the applicant were filed by learned APP in the Status

⁷ CrI. A. No.152/2020



Report.

8. Based on the aforesaid previous conduct and criminal antecedents of the applicant, along with recovery of *commercial quantity* of heroin recovered from the applicant, the bar under *Section 37* of the NDPS Act is applicable, and bail ought not to be granted to the applicant. Reliance in this regard is placed upon the decision of the Hon'ble Supreme Court in ***NCB vs. Mohit Aggarwal***⁸.

9. Heard learned counsel for the applicant and the learned APP for the State and perused the Status Report and the other documents on record along with the judgments cited at Bar.

10. The law regarding grant of bail has been laid to rest by the Hon'ble Supreme Court in ***Prasanta Kumar Sarkar vs. Ashis Chatterjee***⁹; ***State of Uttar Pradesh vs. Amaramani Tripathi***¹⁰ and ***Deepak Yadav vs. State of Uttar Pradesh***¹¹, as the parameters therein are laid out. Further, as held in ***Union of India vs. Niyazuddin SK & Anr.***¹², 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* NDPS Act, if the Public Prosecutor has opposed the grant of bail.

⁸ CrI. A. Nos.6128-29/2021

⁹ (2010) 14 SCC 496

¹⁰ (2005) 8 SCC 21

¹¹ (2022) 8 SCC 559

¹² 2017 INSC 686



11. The Court herein is dealing with ‘*commercial quantity*’ under the NDPS Act, as such the rigours of *Section 37* NDPS Act are very much applicable. The facts involved are such that neither of the *twin conditions* are satisfied herein since the applicant has been caught in personal possession of the contraband by the raiding team, there are no reasons to doubt the said recovery. Also, the past antecedents of the applicant involving the same nature of offences do not exude confidence in granting bail to the applicant.

12. Moreover, the relevant information has been reduced in writing, and only after relevant entries *vide* the DDs, the raiding team was constituted. Non-production of third-party witnesses can itself not be fatal and/ or determinative to the case of the prosecution at the stage of granting bail to the applicant. Reliance is placed upon *State of Punjab vs. Baldev Singh*¹³ wherein it has been held that whether due process has been adopted is a question of fact to be determined after trial. The other judgements relied upon by learned counsel for the applicant are of no assistance.

13. Accordingly, in view of the foregoing, the present application is dismissed.

14. Needless to say, the observation 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

¹³ Judgement dated 21.07.1999 in CrI. A. No.396/1990