



2026:DHC:507



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

Reserved on: January 15, 2026

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Pronounced on: January 21, 2026

+ **BAIL APPLN. 4034/2025**

PAHALMAN BUDHA MAGAR

.....Applicant

Through: Mr. Aditya Aggarwal, Ms. Kajol Garg,
Mohd. Yasir and Mr. Naveen Panwar,
Advts.

Versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Raghuinder Verma, APP for the
State with Mr. Aditya Vikram Singh,
Advocate and DI Bintu Sharma,
Special Cell, Delhi Police.

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

JUDGMENT

1. By virtue of the present bail application under *Section 483* read with *Section 528* of the Bharatiya Nagarik Suraksha Sanhita, 2023 (**BNSS**), the applicant/ accused/ Khali Daa/ Pahalman Budha Magar¹ seeks grant of regular bail in proceedings arising from FIR No.266/2023 dated 19.10.2023 filed under *Section(s) 20/25/29* of the Narcotic Drugs and Psychotropic Substances, Act, 1985, (**NDPS Act**) registered at PS.: Special Cell, Delhi.

2. As per facts, on 19.10.2023, upon the concerned ASI having received

¹ Hereinafter as "**applicant**"



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an intimation *qua* smuggling of *Charas*/ Harish² from Nepal being supplying to major cities including Delhi/ N.C.R., pursuant to information one Mr. Suddhi was found at Paper Market, Gazipur, Delhi at 01:15 P.M., and after due legal compliance, the concerned officials searched the said Mr. Suddhi. Although nothing was found on his person, however, upon interrogation, a total quantity of 32.230 Kgs of *Charas* was found and seized from the artificial cavities of his car Maruti Swift [UP 32 DP 4234]. The said *Charas* was sealed as per legal requirements and FIR No.266/2023 dated 19.10.2023 under *Section(s) 20/25* of the NDPS Act was registered against him.

3. On 20.10.2023, a police remand for further investigation was granted by the learned Additional Sessions Judge, Special Judge NDPS Act, Patiala House Courts Delhi, New Delhi³, wherein, the said Mr. Suddhi disclosed that he had delivered 50 Kgs *Charas* in Delhi on instructions of Mr. Umesh Yadav, Mr. Sahil and Mr. Sajid to the applicant around *thirty days* before, and that he was residing near Deer Park, Safdarjung, New Delhi. Acting thereon, a raid was conducted on 20.10.2023 around 06:50 P.M. at Arjun Nagar, Safdarjung Enclave, and the applicant, a Nepal national, was apprehended therefrom. Upon enquiry, it was found that the remaining *Charas* was stored in his rented premises being I-55, 5th floor, Arjun Nagar, Safdarjung Development Area, Delhi, wherefrom two suitcases containing a total quantity of 29.055 Kgs *Charas*, Rs.1,68,000/- cash, packing material and an electronic weighing machine were recovered, which were seized and

² Hereinafter as “*Charas*”

³ Hereinafter as “*learned Trial Court*”



sealed as per legal procedure and thereafter, the applicant was arrested *vide* Arrest Memo dated 20.10.2023. Thence, the learned Trial Court, *vide* order dated 21.10.2023 granted police remand for *five days* for further interrogation.

4. Thereafter, based on the disclosure of the applicant, another co-accused Mr. Kailye Bahadur Argeja @ Dhan Bahadur was apprehended on 25.10.2023 from Majnu ka Tila, Delhi and 1.438 Kgs of *Charas* was recovered from his bag and samples were drawn as per law and sent to FSL, and the seized products were confirmed as *Charas*. After completion of investigation, a Charge Sheet was filed on 29.03.2024, wherein charges under *Sections 20(c), 25 and 29* of the NDPS Act were framed *vide* order dated 19.02.2025 by the learned Trial Court and the matter was listed for prosecution's witnesses.

5. Thereafter, the applicant herein moved an application for regular bail before the learned Trial Court, which, after considering various factors, was dismissed *vide* order dated 14.10.2025.

6. Thus, the present regular bail application before this Court.

7. Mr. Aditya Aggarwal, learned counsel for the applicant primarily submitted that no grounds of arrest were provided orally to the applicant neither whilst being arrested nor subsequently in a written form, which is not only a gross violation of the rights enshrined under *Article 22(1)* of the Constitution of India⁴ but the act of the concerned authority also violated

⁴ Hereinafter as "*Constitution*"



Section 47 of the Bharatiya Nagarik Suraksha Sanhita, 2023⁵ and *Section 52* of the NDPS Act. Reliance in this regard was placed upon ***Pankaj Bansal vs. UOI & Ors.***⁶; ***Prabir Purkayastha vs. State (NCT of Delhi)***;⁷ ***Lallubhai Jogibhai Patel vs. Union of India & Ors.***;⁸ ***Vihaan Kumar vs. State of Haryana***⁹ and ***Mihir Rajesh Shah vs. State of Maharashtra & Ors.***¹⁰

8. Further, Mr. Aditya Aggarwal, learned counsel also submitted that no videography/ CCTV footage was conducted during the alleged recovery from the rented premises of the applicant, more so, whence videography was carried out for the other two recoveries in the present case, which is a direct contravention of *Section 105* of the BNSS as held in the judgment entitled ***Rahul Rahaman vs. NCB.***¹¹ The learned counsel then submitted that since no independent witness joined the investigation, it was/ is a breach of *Section(s) 103(4)* and *104(8)* of the BNSS.

9. Lastly, Mr. Aditya Agarwal, learned counsel submitted that the applicant has remained in custody for more than *two years*, during which his right to a speedy trial guaranteed under *Article 21* of the Constitution has been infringed and since the delay in the trial is not attributable to the applicant, the conclusion of the trial is likely to take considerable time, and hence, his continued incarceration is neither warranted nor justified.

10. *Per contra*, Mr. Raghuinder Verma, learned APP for the State

⁵ Hereinafter as “BNSS”

⁶ (2024) 7 SCC 576

⁷ (2024) 8 SCC 254

⁸ MANU/SC/0216/1980

⁹ 2025 SCC OnLine SC 269

¹⁰ 2025 SCC OnLine SC 2356

¹¹ SLP(CRL) 11712/2025 decided on 18.12.2025



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submitted that as per *Section 37* of the NDPS Act, bail is liable to be granted only if the Court believes, based on the facts and circumstances involved, that an accused person is not guilty of the offence. Based thereon, the learned APP submitted that bail ought not be granted since the recovery of the narcotic substance, i.e., 29.055 Kgs of *Charas* from the applicant's rented accommodation is in commercial quantity. Even otherwise, the notice under *Section 50* of the NDPS Act was duly served and the applicant was orally informed about the fact/ disclosure made by co-accused, Mr. Suddhi.

11. Learned APP for the State also submitted that the learned Trial Court had correctly, by relying upon the judgement entitled *State of Karnataka vs. Sri Dashan Etc.*¹², denied bail since the present is not a case where the applicant was unaware *qua* the reasons for his arrest on 20.10.2023. The learned APP, lastly, submitted that since the quantity of narcotic substance was commercial in nature i.e. 62.723 Kgs, as also the applicant is a citizen of Nepal, if he is released on bail, there are high chances of him absconding to Nepal.

12. This Court has heard the learned counsel for the applicant as also the learned APP for the State and perused the documents and Status Report on record as also the judgments cited by them.

13. As per settled law in *Prasanta Kumar Sarkar vs. Ashis Chatterjee*¹³, *State of Uttar Pradesh vs. Amaramani Tripathi*¹⁴ and *Deepak Yadav vs.*

¹² 2025 SCC OnLine SC 1923

¹³ (2010) 14 SCC 496

¹⁴ (2005) 8 SCC 21



*State of Uttar Pradesh*¹⁵, while granting bail, the Court is to consider there is a *prima facie* case or reasonable ground to believe that the accused has committed the offence; circumstances which are peculiar to the accused; likelihood of the offence being repeated; the nature and gravity of the accusation; severity of the punishment in the event of conviction; the danger of the accused absconding or fleeing if released on bail; reasonable apprehension of the witnesses being threatened.

14. In a case involving the rigours of *Section 37* of the NDPS Act, the Court may grant bail upon satisfaction of the *twin conditions*, being (i) that there are reasonable grounds to believe that the accused is not guilty of the alleged offence, and (ii) that the accused is not likely to commit any offence while on bail. In fact, as held in *State of M.P. vs. Kajda*¹⁶ by the Hon'ble Supreme Court refusal of bail is the norm and its grant an exception under *Section 37(1)(b)(ii)*.

15. Amongst all the grounds for bail raised by the applicant, the primary issue rests *qua* the non-supply of the grounds of arrest. Recently, the Hon'ble Supreme Court in the case of *Mihir Rajesh Shah (supra)*, after analyzing *Pankaj Bansal (supra)*, *Prabir Purkayastha (supra)* and *Vihaan Kumar (supra)*, which also deals with special statutes, has established a clear position of law *qua* the aforesaid issue by holding that *Article 22(1)* of the Constitution is a substantive constitutional safeguard, not a procedural formality as its purpose is to enable the arrested person to effectively defend

¹⁵ (2022) 8 SCC 559

¹⁶ (2001) 7 SCC 673



himself by securing legal assistance, opposing remand, and exercising available rights. The grounds of arrest must be communicated clearly, with sufficient factual detail, in a language understood by the arrestee for serving the purpose of *Article 22(1)* of the Constitution and merely reading out the grounds of arrest is inadequate, since an arrested person may not be in a mental state to comprehend or retain what is orally conveyed. The relevant directions are reproduced herein as under:-

“56. In conclusion, it is held that:

i) The constitutional mandate of informing the arrestee the grounds of arrest is mandatory in all offences under all statutes including offences under Penal Code, 1860 (now BNS 2023);

ii) The grounds of arrest must be communicated in writing to the arrestee in the language he/she understands;

iii) In case(s) where, the arresting officer/person is unable to communicate the grounds of arrest in writing on or soon after arrest, it be so done orally. The said grounds be communicated in writing within a reasonable time and in any case at least two hours prior to production of the arrestee for remand proceedings before the magistrate.

iv) In case of non-compliance of the above, the arrest and subsequent remand would be rendered illegal and the person will be at liberty to be set free.”

16. The law *qua* the non-supply of the grounds of arrest, in light of ***Pankaj Bansal (supra)*** and ***Prabir Purkayastha (supra)***, is that if the grounds/ reasons for arresting is not provided in writing to the arrestee, the arrest therefore, *ipso facto* gets vitiated on account of directly violating *Article*



22(1) of the Constitution. The aforesaid legal position, as existing on the date of arrest, i.e., 20.10.2023, was subsequently reaffirmed, and further fortified by the Hon'ble Supreme Court in ***Mihir Rajesh Shah (supra)***.

17. In the present case, the Arrest Memo dated 20.10.2023 reads as under:-

“... ..After authorization from the competent authority I alongwith the raiding team reached the area of Safdarjung Delhi and where accused Suddhi identify one person as a Khali DA Near Gargi Sarvodya Kanya Vidhalaya, Chaudhary Hukam Chand Marg, Arjun Nagar, Delhi. On enquiry apprehended person identified as Pahalman Budha Magar @ Pahalman @ Khali Da s/o Hik Bahadur Budha Magar r/o Present: 1-55, 5th floor, Arjun Nagar, Safdarjung Delhi Development Area, Delhi Permanent: Dalibang, 05, Rukum, Nepal. On the instance of apprehended person Pahalman Budha Magar @ Pahalman @ Khali Da from the bed room two peach colour suitcases kept near the single bed was recovered... ..”.

18. Admittedly, the above is silent about the reasons/ grounds for arrest. Moreover, the said Seizure Memo dated 20.10.2023 is also not carrying any required signature/ thumb impression, though it is present on the Seizure Memo of the two other co-accused. The silence on part of the prosecution on the above is another factor weighing in the mind of this Court.

19. No doubt, while granting bail in a case under *Section 37* of the NDPS Act, this Court must take due note of the *twin conditions* elucidated hereinabove, however, the same must be balanced with the fundamental guarantee of an accused being provided the grounds of arrest as per *Article 22(1)* of the Constitution. *Section 37* of the NDPS Act, and/ or the other factors for granting bail to an accused, in such a scenario, cannot eclipse/



override *Article 22 (1)* of the Constitution. A balance has, thus, to be drawn. Also, in light of the directions passed by the Hon'ble Supreme Court in *Mihir Rajesh Shah (supra)* which affirms the view rendered in *Pankaj Bansal (supra)* and *Prabir Purkayastha (supra)*, the grant of bail in cases involving commercial quantity on the basis of non-supply of grounds of arrest is not barred by *Section 37* of the NDPS Act and once it is *admitted* that no grounds of arrest were given at the time of the arrest to an accused, the said arrest and the subsequent remand becomes vitiated.

20. Under such circumstances, since there were no grounds of arrest mentioned and/ or supplied to the applicant takes precedence over the other factors like gravity of the offence, the quantum of recovery, there being no videography/ photography and/ or there being no independent witnesses. The same need not be gone into by this Court at this stage.

21. In fact, in the case of *Sri Darshan etc. (supra)* the Hon'ble Supreme Court was dealing with cancellation of bail where the Charge-Sheet had been filed, and the grounds of detention were served immediately.

22. In view of the aforesaid, the applicant is liable to be released on bail.

23. Accordingly, the applicant is granted regular bail in FIR No.266/2023 dated 19.10.2023 under *Section(s) 20/25/29* of the NDPS Act registered at PS.: Special Cell, Delhi. The applicant be released, subject to him furnishing a personal bond in the sum of Rs.1,00,000/- [*Rupees One Lakh Only*] along with one surety of the like amount by a family member/ friend having no criminal case pending against them subject to the satisfaction of the learned Trial Court, and further subject to the following conditions:-



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- a. Applicant being a foreign national shall surrender his Passport to the I.O. upon his release. If he does not possess the same, he shall file an affidavit before the I.O. to that effect within the stipulated time.
- b. Applicant shall appear before the learned Trial Court and/ or any other authorities on the date of each hearing(s), and/ or if, as and when called for, unless he is exempted by the learned Trial Court and/ or any other authorities concerned.
- c. Applicant shall not leave the National Capital Territory of Delhi without prior permission of this Court and shall ordinarily reside at the address as per the learned Trial Court's records. If he so wishes to change his residential address, he shall immediately intimate about the same to the I.O. by way of an affidavit.
- d. Applicant shall join the investigation as and when called by the I.O. concerned. The applicant shall not obstruct or hamper with the police investigation and shall not play mischief with the evidence collected or yet to be collected by the Police.
- e. Applicant shall provide all his mobile numbers to the I.O. concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the I.O. concerned. The mobile location be kept on at all times.
- f. Applicant shall report to the I.O. at P.S. Special Cell, Delhi once every month in the first week of the month, unless leave of every such absence is obtained from the learned Trial Court.



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g. Applicant shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, or tamper with the evidence of the case or try to dissuade the witnesses from disclosing such facts to the Court or to any Police Officer(s)/ Official(s).

24. Accordingly, the present application is allowed and disposed of in the aforesaid terms.

25. A copy of this order be sent to the concerned Jail Superintendent for necessary information and compliance forthwith.

26. Needless to say, observations made herein, 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 21, 2026/Ab/AKS