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

+ BAIL APPLN. 4241/2025
ANIL @ KALU

.....Applicant

Through: Mr. Hum Nashin Ahmed, Mr.
Imran Alam, Mr. Javed Saifi, Mr.
Tauqeer Hussain, Mr. Zainab, Mr.
Prakhar Singh & Mr. Md. Ashraf
Ali, Advocates.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Yudhvair Singh Chauhan, APP
for the State.
SI Amrendra, ANTF, Crime
Branch.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% **09.04.2026**

1. By way of this application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023, the applicant seeks regular bail in connection with FIR No. 31/2025, dated 30.01.2025, registered at Police Station Crime Branch, Delhi, under Sections 21/25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ["NDPS Act"].

2. The prosecution has placed on record a status report dated 08.12.2025. The facts, as stated in the status report, are as follows:

- a. On 29.01.2025, on the basis of the information received from an informer, one Shiva (co-accused) was apprehended at Signature



- Bridge, and was found to be in possession of 512 grams of heroin.
- b. Shiva identified a vehicle standing nearby belonging to one Sagar (another co-accused), from which a polythene packet was recovered containing a pink powdery substance. Upon testing, the substance was found to be heroin, which was weighed at 299 grams.
 - c. Shiva and Sagar were arrested on 21.04.2025.
 - d. During the course of investigation, it was found that Sagar and his brother Rohit are operating a drug cartel with three other individuals, which do not include the applicant.
 - e. On 04.04.2025, one Manav, alleged to be the source of the contraband supplied to Shiva, was arrested, and a recovery of 106 grams was made from him.
 - f. The present applicant was arrested on 22.04.2025 in his village Aliganj, on the basis of Manav's disclosure statement, and 183 grams of smack was recovered from him.
 - g. Based on the applicant's disclosure, one Shobhit Mishra, who was stated to be his supplier, was apprehended, and 53 grams of crude [used for preparing smack] as well as 54 grams of smack was recovered from him.
3. Mr. Hum Nashin Ahmed, learned counsel for the applicant, submits as follows:
- a. The alleged recovery from the applicant in the present case is of 183 grams of smack, which falls within range of intermediate quantity [5 grams to 250 grams] which would not attract the rigours of Section 37 of the NDPS Act, 1985.



- b. Even proceeding on the basis that the recovery from all the co-accused persons exceeds 250 grams and therefore falls within commercial quantity, the applicant satisfies the tests laid down in Section 37 of the NDPS Act, on account of non-compliance with Sections 42 and 50 of the NDPS Act. No public witness was associated with the alleged recovery, and that even in the absence of the public witnesses, no video recording or photograph has been placed before the Court.
 - c. In the case of co-accused Sagar, the Special Court has granted bail, even though the recovery from him was much higher than the applicant. Mr. Ahmed seeks parity with co-accused Sagar, and four other co-accused, who all have also been released on bail, except co-accused Shiva from whom the individual recovery was much higher than that of the applicant, i.e. 512 grams.
 - d. The applicant is in custody for a period of more than 11 months. Although charge sheet has been filed, charges have not yet been framed, and the prosecution has cited 33 witnesses, which gives rise to an apprehension of a prolonged trial.
4. Mr. Yudhvair Singh Chauhan, learned Additional Public Prosecutor, on the other hand, opposes the bail application, and submits as follows:
- a. The total quantity seized from all co-accused is in excess of 250 grams, and thus constitutes a commercial quantity of recovery. He submits that the twin conditions of Section 37 of NDPS Act must be applied.
 - b. As far as non-compliance of the provisions of the NDPS Act is concerned, Mr. Chauhan's submits that the chargesheet records that



the seizure from the applicant has been video-graphed. He further submits that this is a matter of trial, and the same is not to be taken into account at this stage.

- c. Mr. Chauhan submits that the Special Court has rightly rejected the applicant's case for parity, as he was declared a proclaimed offender in another proceedings under the NDPS Act [FIR No. 35/2022, at P.S. Mayur Vihar under Sections 21/25/29 of the NDPS Act]. He also submits that his involvement in an earlier FIR for similar offences renders this case different from the other co-accused persons.

5. In rejoinder, Mr. Ahmed submits that, although the chargesheet contains an assertion that the seizure from the applicant was video-graphed, no video recording has yet been placed before the Special Court. With regard to FIR No. 35/2022, lodged at P.S. Mayur Vihar, Mr. Ahmed submits that the applicant has been released on bail in that case, *vide* order dated 26.08.2025. Although the nominal roll filed by the jail superintendent indicates otherwise, Mr. Ahmed submits that this is erroneous and a copy of the bail order has been placed on record, as Annexure 4 to the bail application.

6. Having heard learned counsel for the parties, I am of the view that, having regard to the facts that the individual recovery from the applicant was of an intermediate quantity, the argument of Mr. Ahmed that Section 37 of NDPS Act is not applicable to the present case, is plausible. Although charges are yet to be framed, at this *prima facie* stage, it may be noted that the recovery from the applicant was from his village Aliganj, and not by way of joint recovery, alongwith the other co-accused.



Reference in this connection may be made to the judgment of this Court in *Chhalimuddin v. State NCT of Delhi* [BAIL APPLN 3017/2024, dated 01.04.2025], and a judgment of the High Court of Jammu & Kashmir and Ladakh in *Abdul Hamid v. Union Territory of J & K & Anr* [BAIL APP No. 261/2024, dated 07.04.2025] [hereinafter, “*Abdul Hamid*”]. In *Abdul Hamid*, the High Court held that the question of whether the quantities of contraband recovered from various accused persons can be clubbed on the ground of common intention is a matter of trial.

7. In the present case, even proceeding on the basis that the Section 37 of the NDPS Act applies, the applicant claims parity with the case of co-accused, who have been granted bail. In the case of co-accused Sagar, the individual recovery from him exceeded the commercial quantity, but the Special Court granted bail *vide* order dated 24.03.2025. The Court considered several judgments of the Supreme Court and this Court, including judgment of the Supreme Court in *Mohd. Muslim v. State (NCT of Delhi)* [2023 SCC OnLine SC 352], which makes it clear that the Court is required to take a *prima facie* view on the basis of the material on record, and is not required, at the stage of bail adjudication, to come to a conclusion beyond reasonable doubt. The Special Court in Sagar’s case found that Section 42 of the NDPS Act had not been complied with, as independent witnesses had not joined. While such non-compliance may not ultimately be held to vitiate the trial, for the purposes of bail, this would be a relevant consideration.

8. In the present case also, public witnesses were not associated with the recovery. Although it has been asserted in the chargesheet that the seizure from the applicant was video-graphed, the video recording has not



been produced before the Special Court at this stage.

9. I am informed that the order granting bail to co-accused Sagar and Manav have been challenged before this Court by way of CRL.M.C. 1687/2026 and CRL.M.C. 1700/2026. The said petitions have apparently been filed only in March 2026, whereas they were granted bail by the Special Court on 24.03.2025 and 08.09.2025 respectively. Suffice it to state that those petitions will be decided on their own merits.

10. The only ground upon which the prosecution seeks to distinguish the case of other co-accused from the present case, is that the applicant is facing another trial for offences under the NDPS Act, being FIR No. 35/2022, registered at P.S. Mayur Vihar, in which he was declared a proclaimed offender. However, the order of the Special Court dated 26.08.2025, in which he was granted bail in the very same FIR, has been placed on record, and has not been challenged by the prosecution.

11. In the facts and circumstances noted above, I am of the view that the involvement of the applicant in one other FIR is not conclusive. The Supreme Court in *Prabhakar Tewari v. State of Uttar Pradesh and Anr.* [(2020) 11 SCC 648] has clearly held that prior criminal antecedents need not, in every case, result in denial of bail to the accused. In my view, the appropriate balance would be to impose stringent conditions to ensure that the applicant is available for trial.

12. In the present case, the applicant has been in custody for almost one year, and charges are yet to be framed. 33 witnesses have been listed in the chargesheet, which makes expeditious culmination of trial improbable.

13. In view of the fact that the recovery from the applicant individually



was *prima facie* of intermediate quantity, and the facts and circumstances mentioned above, it is directed that the applicant be released on bail in connection with No. 31/2025, dated 30.01.2025, registered at Police Station Crime Branch under Sections 21/25 of the NDPS, subject to furnishing a personal bond in the sum of Rs. 50,000/-, and one surety in the like amount, to the satisfaction of the learned Trial Court/Duty Magistrate, subject also to the following further conditions:

- a. The applicant shall appear before the Special Court on each and every date of hearing;
- b. The applicant shall provide his permanent address to the Special Court, as also the address where he is residing during the pendency of the case. The applicant shall intimate the Investigating Officer [“IO”], and file an affidavit before the Special Court, regarding any change in residential address.
- c. The applicant shall provide his mobile number to the concerned IO/Station House Officer, which shall be kept in working condition at all times. The mobile number shall not be switched off or changed without prior intimation to the IO during the pendency of the trial;
- d. The applicant will report to the jurisdictional police station at his place of residence every Monday at 04:00PM, and will be released within one hour, after completion of formalities.
- e. 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;



- f. The applicant shall not commit any offence during the period of his release.
14. The bail application is disposed of in terms of the above.
15. It is clarified that any observations made in the present order are solely for the purpose of deciding the present bail application, and shall neither influence the trial proceedings, nor be construed as an expression of opinion on the merits of the case.
16. Copy of the order be communicated to the concerned Jail Superintendent electronically for information and necessary compliance.

PRATEEK JALAN, J

APRIL 9, 2026

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