



2026:DHC:8832



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 06.10.2026

CNR No. DLHC010352352026

+ BAIL APPLN. 3111/2026

VISHAL

.....Petitioner

Through: Mr. Arvind Kumar, Mr. Subit Kumar Singh, Mr. Ankit Kr. Vats, Ms. Sanjana Kumari, Ms. Srijana Bhardwaj and Ms. Riya Manna, Advs.

versus

STATE NCT OF DELHI

.....Respondent

Through: Ms. Priyanka Dalal, APP for the State and Ms. Swati, Adv.

CORAM:**HON'BLE MR. JUSTICE SACHIN DATTA**SACHIN DATTA, J. (Oral)

1. The applicant seeks regular bail under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), in FIR No.0085/2026, registered at PS New Friends Colony, South-East Delhi, under Sections 22(C)/25/29/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter “NDPS Act”).

2. The prosecution case is that on 26.03.2026, on the basis of secret information received at the office of Anti-Narcotics Squad/SED, East of Kailash, New Delhi, that one Kartik, with the help of an associate, namely Vishal (the petitioner), was supplying ‘MD’ (Methaqualone), a raid was conducted near SPA Gate No.1, Gurudwara Road, Taimoor Nagar, New Friends Colony, New Delhi.



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3. The prosecution further alleges that at about 11:10 PM, co-accused Kartik, who had arrived in a car, and the applicant (Vishal), who had come on a TVS scooter, were apprehended. A packet weighing 99.25 grams of contraband (including polythene) was recovered from the right pocket of Kartik. Upon testing the contraband using the drug field-testing kit, it tested positive for 'MD (Methaqualone)'. Nothing was recovered from the applicant, *i.e.*, from both his person and scooter. The FSL subsequently reported the substance to be 'Methamphetamine'.
4. The applicant was arrested on 26.03.2026 and has been in custody ever since, *i.e.*, 5 months and 7 days as of 03.09.2026, as per the Nominal Roll. The Roll records satisfactory jail conduct.
5. The Status Report states that the chargesheet has been filed and the case is currently at the stage of arguments on charge. The applicant is about 20 years old.
6. The Nominal Roll confirms that the present applicant has no previous involvement as per the Delhi Prison Record. It also states that the applicant has no pending case against him.
7. The applicant's previous application for bail was dismissed by the ASJ-04, Special Judge (NDPS), South East District, Saket Court, New Delhi, *vide* order dated 06.06.2026.
8. Learned counsel for the applicant emphasises the fact that nothing was recovered from the applicant. It is also urged that the applicant's mere presence near the co-accused cannot make him a party to the possession. The case against the applicant rests on the disclosure statement of the co-accused. Further, it is pointed out that the applicant is a young man with clean antecedents.



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9. Learned APP for the State opposes the application on the basis of the Status Report. It is submitted that since there was recovery of a commercial quantity of Methamphetamine, the rigours of Section 37 of the NDPS Act would apply. It is further asserted that CCTV footage and disclosure statements of co-accused Sarfaraz Alam and Kartik Singh show the involvement of the petitioner in the commission of the offence.

Analysis and Reasoning

10. As per the prosecution's assertion, Section 37 of the NDPS Act would apply as the commercial quantity of Methamphetamine (as per the FSL Report) has been allegedly recovered in the present matter. **Section 37** of the NDPS Act is in the following terms:-

"37. Offences to be cognizable and non-bailable.

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)—

(a) every offence punishable under this Act shall be cognizable;

*(b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27A and **also for offences involving commercial quantity** shall be released on bail or on his own bond unless—*

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

*(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are **reasonable grounds for believing that he is not guilty of such offence** and that **he is not likely to commit any offence while on bail**.*

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail."

(emphasis supplied)

11. On a bare reading of Section 37(1)(b) of the NDPS, in cases of recovery of commercial quantity, bail can only be granted if the Court is



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satisfied that there are reasonable grounds for believing that the applicant is not guilty of the offence, and that he is not likely to commit any offence while on bail.

12. Reference in this regard may be made to ***State of Punjab v. Balraj Singh @ Billa, 2026 INSC 618***, wherein the Supreme Court observed:

“17. Keeping in view the above expositions of law, we now proceed to examine the impugned order. The abovementioned decisions of this Court display the consistent view that when it comes to cases involving commercial quantity of narcotics, the mandatory requirements of Section 37 ought to be considered. It is not in dispute that the case at hand, involves commercial quantity. In such a scenario, consideration and reference to the twin conditions enumerated under Section 37 of the NDPS Act was mandatory. Upon a bare perusal of the impugned order, it is evident that there has been no consideration at all by the High Court on the twin conditions. In such a scenario, the impugned order cannot be sustained in the eyes of law.”

(emphasis supplied)

13. Further, ***Balraj Singh (Supra)*** relies on ***State of Meghalaya v. Lalrintluanga Sailo, 2024 SCC OnLine SC 1751***, the observations of which are reproduced hereinbelow:

“5. There cannot be any doubt with respect to the position that in cases involving commercial quantity of narcotic drugs or psychotropic substances, while considering the application of bail, the court is bound to ensure the satisfaction of conditions under Section 37(1)(b)(ii) of the NDPS Act.

10. Thus, the provisions under Section 37(1)(b)(ii) of the NDPS Act and the decisions referred supra revealing the consistent view of this Court that while considering the application for bail made by an accused involved in an offence under the NDPS Act a liberal approach ignoring the mandate under Section 37 of the NDPS Act is impermissible. Recording a finding mandated under Section 37 of the NDPS Act, which is sine qua non for granting bail to an accused under the NDPS Act cannot be avoided while passing orders on such applications.”



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(emphasis supplied)

14. It is noticed that ASJ-04, Special Judge (NDPS), South East District, Saket Court, New Delhi dismissed the applicant's previous bail application because of the rigours of the afore-discussed Section 37 of the NDPS Act.

15. However, it is pertinent to note that there is a discrepancy in the identity of the substance itself, as the FIR and FSL Report describe it to be of different nature. The FIR records that the substance, weighing 99.25 grams, when tested using the drug field-testing kit, tested positive for MD (Methaqualone). On the other hand, the FSL reports the contraband to be Methamphetamine.

16. This discrepancy is crucial because if the FIR's version is to be accepted, the recovery would not be of a commercial quantity, as the commercial quantity of MD (Methaqualone) is admittedly 500 grams. On the contrary, if the substance is accepted to be Methamphetamine as per the FSL Report, the recovery would be of commercial quantity, as the commercial quantity of Methamphetamine is 50 grams.

17. Further, the FIR, despite recording the recovery of 'intermediate' recovery, invokes Section 22(C) of the NDPS Act against the accused.

18. The material nature of the discrepancy has a crucial bearing on the satisfaction of the threshold set out in Section 37 of the NDPS Act. It is clarified that this Court by no means is commenting on the implication of this discrepancy or passing any ruling on the veracity of the recovery. The same is taken note of only for the purpose of the present bail application.

19. It would be pertinent to note that this Court, in **Sahil Sharma Alias Maxx v. State Govt. of NCT of Delhi, 2025:DHC:10798**, in the context of a similar discrepancy, made the following observations:



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“Insofar as the discrepancy in the field testing kit and FSL report is concerned, it is pertinent to note that admittedly, at the time of the alleged recovery, the contraband seized from the applicant’s pocket tested positive for MDMA in the field testing kit, however, when the same was sent to FSL, the contraband tested positive for methamphetamine. A bare perusal of the bail dismissal order passed by the learned Trial Court indicates that the Court was weighed by the explanation of the prosecution that the field testing kit contains few limited samples and highly synthesized salts cannot be detected from the same. While the veracity of the prosecution’s explanation in this regard can only be tested during the course of trial, at this stage, in the absence of any supporting material to lend credence to the aforesaid assertion, the argument of the prosecution cannot be taken on a demurrer and the benefit of the ex facie discrepancy has to be accorded to the applicant, especially when the prosecution’s case against the applicant is essentially helmed on the recoveries effected from him. However, apart from MDMA, other contrabands have also been allegedly recovered from the possession of applicant and, therefore, the applicant cannot be admitted on bail solely for the said reason.”

(emphasis supplied)

20. Furthermore, the Supreme Court’s observations in **Narcotics Control Bureau v. Mohit Aggarwal, (2022) 18 SCC 374** qua the conditions prescribed in Section 37(1)(b)(ii) of the NDPS Act become relevant in the present context:

“15. We may clarify that at the stage of examining an application for bail in the context of Section 37 of the Act, the court is not required to record a finding that the accused person is not guilty. The court is also not expected to weigh the evidence for arriving at a finding as to whether the accused has committed an offence under the NDPS Act or not. The entire exercise that the court is expected to undertake at this stage is for the limited purpose of releasing him on bail. Thus, the focus is on the availability of reasonable grounds for believing that the accused is not guilty of the offences that he has been charged with and he is unlikely to commit an offence under the Act while on bail.”

(emphasis supplied)

21. An observation on similar lines was also made by the apex Court in



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Union of India v. Shiv Shanker Kesari, (2007) 7 SCC 798, the same is reproduced hereinbelow:

“11. The court while considering the application for bail with reference to Section 37 of the Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty.”

(emphasis supplied)

22. Apart from the afore-discussed discrepancy, the following aspects also weigh with the Court:-

- a. Nothing was recovered from the applicant. The entire quantity was recovered from the pocket of co-accused Kartik. Nothing was even recovered from the applicant's scooter.
- b. The FIR attributes to the applicant no act beyond his arrival at the spot. The further role attributed to him, viz., that he received the contraband from the co-accused and carried it in his scooter, rests on his disclosure statement of the co-accused. This aspect is required to be tested in Trial. However, the Bombay High Court in *Ravi Manoj Rai v. Union of India*, (2025) 1 HCC (Bom) 1, after considering the Supreme Court's decisions in *Narcotics Control Bureau v. Pallulabid Ahmad Arimutta*, (2022) 12 SCC 633 and *Tofan Singh v. State of T.N.*, (2021) 4 SCC 1 and this Court's observations in *Phundreimayum Yas Khan v. State (NCT of Delhi)*, 2023 SCC OnLine Del 135, noted that the statement of co-accused without corroborating material cannot



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be given due weight to draw guilt upon the applicant at the stage of bail. The observations of the Supreme Court in ***Mohit Aggarwal (Supra)*** approve this position of law.

- c. The status report refers to CCTV footage. It has not been brought out with explicit clarity as to what the CCTV footage shows and whether it shows the applicant personally handling any contraband. Currently, there appears only to be a general reference to the CCTV footage.

23. Taking together the above circumstances, the threshold requirement in Section 37(1)(b)(ii) of the NDPS Act is satisfied. However, it is clarified that this is the tentative inference drawn at this stage for the purpose of considering the present application.

24. As to the second condition of Section 37(1)(b)(ii) of the NDPS Act, the applicant is 20 years old. He has no previous involvement and his jail conduct is satisfactory. He has been in custody for over six months. There is no material to suggest that he is likely to commit any offence while on bail. The requirement of existence of some material to conclude that the accused is not likely to commit any offence, as laid out in ***Shiv Shankar Kesari (Supra)***, is satisfied by the factors considered above.

25. Accordingly, the applicant is admitted to regular bail on furnishing a personal bond of Rs.25,000/- with two sureties of like amount to the satisfaction of the Trial Court. The same shall also be subject to the following conditions:

- i. The applicant/accused shall not leave NCT of Delhi or travel out of the country without prior permission of the Trial Court;
- ii. The applicant/accused shall provide his permanent address to the



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Trial Court, and also the address where he will be residing during the pendency of the case;

- iii. The applicant/accused shall intimate the Investigating Officer (IO) and file an affidavit before the Trial Court regarding any change in his residential address;
 - iv. The applicant/accused shall furnish his mobile number to the Investigating Officer (IO)/Station House Officer (SHO) concerned, which shall be kept in working condition at all times. The mobile number shall be kept switched on, with location services enabled at all times, and the same shall be shared with the IO. The mobile number shall not be changed without prior intimation to the IO during the pendency of the trial;
 - v. The applicant/accused shall report to the IO as and when called for by the IO.
 - vi. The applicant/accused shall not directly or indirectly contact the complainant/victim, any prosecution witness, and their family members;
 - vii. The applicant/accused 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;
 - viii. The applicant/accused shall appear before the Trial Court on each and every date of hearing;
 - ix. The applicant/accused shall not indulge in any criminal activity during the period of bail.
26. If any of these conditions is breached, it shall be open for the State to



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seek cancellation of bail.

27. The application stands disposed of in the above terms.

28. The Trial Court is requested to expedite the trial proceedings to the extent feasible.

29. It is clarified that the observations made herein 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 of this Court on the merits of the case.

30. Let a copy of this order be communicated to the concerned Jail Superintendent electronically for information and necessary compliance.

31. Order *dasti*.

OCTOBER 6, 2026/cl/vk

SACHIN DATTA, J