



2026:DHC:8518



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

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Date of Decision: 29.09.2026# **CNR No. DLHC010632742025**+ **BAIL APPLN. 3332/2025**

WALI MD @SHAMSHAD

.....Petitioner

Through: Mr. Pranav Prakash Sharma, Mr. S.P. Sharma, Mr. Ankit Sharma and Mr. Tarun Goel, Advs.

versus

THE STATE (NCT OF DELHI) & ANR.

.....Respondents

Through: Ms. Priyanka Dalal, APP for State.
SI Sohan, Anti Narcotic Cell, ND.
ASI Balraj, Ps Badli.**CORAM:****HON'BLE MR. JUSTICE SACHIN DATTA****SACHIN DATTA, J. (ORAL)**

1. The present application has been filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter "BNSS") (corresponding to Section 439 of the Code of Criminal Procedure, 1973), seeking regular bail in FIR No.1044/2024 registered at PS Narela Industrial Area under Sections 21, 25, and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter "NDPS Act").
2. The applicant is stated to be in judicial custody since 19.11.2024, save for the periods during which he was on interim bail.
3. The prosecution alleges recovery of 268 grams of heroin from a wooden almirah at his residence.
4. The quantity being commercial (the commercial quantity for heroin



2026:DHC:8518



being 250 grams), the rigours of Section 37 of the NDPS Act are attracted.

5. Learned counsel for the applicant has principally drawn attention to the chronology surrounding the applicant's arrest and the alleged recovery. It is submitted that the written grounds of arrest furnished to the applicant before the alleged recovery from his residence already recorded the recovery of 268 grams of heroin.

6. According to the applicant, this circumstance strikes at the very credibility of the alleged recovery.

7. Learned APP for the State vehemently opposes this application.

8. It is submitted that the applicant was apprehended at the instance of co-accused Mohd. Shakir, who was then in police remand, and that, pursuant thereto, 268 grams of heroin were recovered from the applicant's residence.

9. It is contended that the discrepancy relied upon by the applicant is, at best, a matter to be tested during the trial and cannot dilute the statutory rigour of Section 37 of the NDPS Act. In this regard, the learned APP for the State has placed reliance on the following judgments passed by the Supreme Court:

(i) ***Narcotics Control Bureau vs. Mohit Aggarwal***, (2022) 18 SCC 374;

(ii) ***Union of India through Narcotics Control Bureau, Lucknow vs. Md. Nawaz Khan***, (2021) 10 SCC 100; and

(iii) ***Narcotics Control Bureau vs. Kashif***, 2024 INSC 1045.

10. This Court has considered the rival contentions and perused the record.

11. The prosecution's own narrative of events itself assumes significance.

12. As per the status report, the police party, along with co-accused Mohd. Shakir (who was then on police custody remand), reached Jhanda



2026:DHC:8518



Chowk, JJ Colony, Bawana, Delhi at 09.10 AM on 19.11.2024, where the applicant was identified by him. The applicant was thereafter arrested at around 09:30 A.M. on 19.11.2024.

13. The prosecution case is that the police thereafter proceeded to the applicant's residence, searched the premises, and recovered, from a wooden almirah, a packet which, upon weighing, was found to contain 268 grams of heroin.

14. However, the written grounds of arrest, which preceded the aforesaid alleged recovery, already makes a reference to the recovery of 268 grams of heroin from the applicant. As per the charge-sheet itself, the grounds of arrest were prepared and signed by the applicant before he was arrested at about 09:30 A.M., i.e., before the house search was undertaken. The written grounds of arrest have been appended to the present application and are reproduced as under:

Case FIR No.1044/2024 Dated :- 13/11/2024 U/s 21/25 NDPS ACT, PS Narela Industrial Area, Delhi,

S/V :- Wali Mohd. @ Samsadh S/o Rahis R/o E-2270, JJ Colony, Bawana, Delhi, Age-60 Yrs,

Subject :- Ground of Arrest

मुकदमा हजा में गिरफ्तार मुलजिम Shakir को आपने कई बार Heroin Supply की थी जिसका Shakir ने अपने Dislosure में बतलाया है व आपसे 268 gram Heroin बरामद हुई हैं। जो Shakir ने आपके घर की Pointing Out Memo बनवाई हैं। जो आपकी गिरफ्तारी के कारण इस प्रकार हैं :-

1. आप द्वारा किया गया अपराध गैर जमानती है।
2. आपके द्वारा किसी और अपराध करने से रोकने के लिए।
3. आपके खिलाफ अपराधमामले की उचित जांच करने के लिए।
4. आप द्वारा अपराध के साक्ष्य को नष्ट करने या किसी भी तरह से उसके साथ छेड़छाड़ करने से रोकने के लिए।
5. आपको किसी भी व्यक्ति को, जो मामले के तथ्यों से परिचित है, प्रभावित करने, धमकाने या कोई प्रलोभन देने से रोकने के लिए, ताकि वह उन तथ्यों को अदालत या पुलिस अधिकारी के सामने प्रकट न करे।
6. आपके निर्देशानुसार आगे की बरामदगी करने के लिए।
7. अपराध की श्रृंखला के पिछले और अगले संबंधों को पता लगाने के लिए।
8. आपके अन्य साथियों की तलाश करने के लिए।

इसीलिए आपको मुकदमा उपरोक्त में आज दिनांक 19/11/2024 को गिरफ्तार किया जा रहा है और आपको माननीय अदालत Sh. Dharendra Rana, ASJ, Rohini Court, Delhi साहब की अदालत में पेश किया जाएगा।

21/11/24



2026:DHC:8518



15. This aspect was also raised before the learned Special Judge (NDPS), North District, Rohini Courts, Delhi, who rejected the applicant's second bail application vide order dated 22.08.2025. In paragraph 3.4 of the said order, the applicant's contention in this regard was recorded as under:

"Bare perusal of grounds of arrest reveal that quantity of contraband has been mentioned in this memo but by that time recovery was not effected by the IO."

16. While rejecting the application, the learned Special Judge held (in paragraph 3.11 of the said order) that, even assuming a discrepancy in the grounds of arrest, the same was inconsequential in view of the video recording of the recovery, and that any irregularity in the recovery proceedings vis-à-vis the grounds of arrest was a matter to be tested in cross-examination at the trial.

17. In the considered opinion of this Court, however, this circumstance cannot, at the present stage, be brushed aside as an inconsequential irregularity in the preparation of the grounds of arrest.

18. The issue is not merely whether the grounds of arrest were properly communicated. The more fundamental question is how a document prepared and served before the alleged recovery came to record the precise quantity which, according to the prosecution itself, was discovered subsequently.

19. According to the applicant, the same impinges upon the credibility of the alleged recovery.

20. The Court is conscious that the veracity of the prosecution evidence will ultimately be determined at the trial. No definitive finding regarding the genuineness or otherwise of the recovery is, therefore, warranted at this stage.



2026:DHC:8518



21. Equally, however, Section 37 of the NDPS Act does not require this Court, while considering bail, to return findings of acquittal. In this regard, the Supreme Court in *Narcotics Control Bureau vs. Mohit Aggarwal* (supra), a judgment relied upon by the State itself, has clarified that the Court is not required, at the bail stage, to record a finding that the accused is in fact not guilty. The entire exercise that the Court is expected to undertake at this stage is for the limited purpose adjudging the bail application. As such, the focus is on the availability of reasonable grounds for believing that the accused is not guilty of the offences with which he has been charged and that he is unlikely to commit an offence under the Act while on bail. The relevant observations of the Supreme Court read as under:

“14. To sum up, the expression “reasonable grounds” used in clause (b) of Sub-Section (1) of Section 37 would mean credible, plausible and grounds for the Court to believe that the accused person is not guilty of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offence. Dove-tailed with the aforesaid satisfaction is an additional consideration that the accused person is unlikely to commit any offence while on bail.

15. We may clarify that at the stage of examining an application for bail in the context of the 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.”



2026:DHC:8518



22. Tested on the aforesaid touchstone, the unexplained chronology concerning the grounds of arrest and the subsequent alleged recovery constitutes, *prima facie*, a circumstance that satisfies the first limb of Section 37(1)(b)(ii) of the NDPS Act.

23. This conclusion is confined to the consideration of the present bail application and shall have no bearing on the appreciation of evidence during the trial.

24. As regards the second limb of Section 37(1)(b)(ii), the material placed before the Court does not disclose any previous criminal involvement of the applicant.

25. As per the nominal roll, the applicant was released on interim bail on two occasions, i.e., from 20.05.2025 to 26.05.2025 and from 09.06.2025 to 13.07.2025, and he surrendered on each occasion. No misconduct during interim bail has been reported.

26. These circumstances materially mitigate the apprehension that the applicant is likely to commit any offence while on bail or to breach the conditions of bail.

27. Additionally, this Court has also taken note of the period for which the applicant has been in custody. Admittedly, as per the nominal roll, the applicant has been in custody for almost two years, excluding the periods of interim bail. Though the period of custody is not, by itself, a decisive consideration under Section 37 of the NDPS Act, it is a relevant factor to be weighed along with the absence of criminal antecedents and the progress of the trial. Charges under Sections 21/25/29 of the NDPS Act have been framed against the applicant, and the case is stated to be at the stage of



2026:DHC:8518



recording of prosecution evidence; however, nothing on record indicates that any of the 18 witnesses cited in the charge-sheet has, in fact, been examined, so that there has been no real progression beyond the framing of charges.

28. In ***Dheeraj Kumar Shukla vs. State of Uttar Pradesh***, 2023 SCC OnLine SC 918, and ***Rabi Prakash vs. State of Odisha***, 2023 SCC OnLine SC 1109, the Supreme Court gave weightage to the protraction of the trial and the resultant prolonged incarceration, even in the context of the NDPS Act.

29. In the totality of the circumstances, this Court is satisfied that the twin conditions stipulated in Section 37(1)(b)(ii) of the NDPS Act stand fulfilled in the present case, and that the applicant deserves to be enlarged on bail.

30. Accordingly, the application is allowed.

31. The applicant, Wali Md @ Shamshad, is admitted to regular bail in FIR No.1044/2024 registered at PS Narela Industrial Area, on furnishing a personal bond of Rs.50,000/-, with one local surety of the like amount, to the satisfaction of the Trial Court, subject to the following conditions:

- i. The applicant shall not leave the NCT of Delhi or travel out of the country without the prior permission of the Trial Court;
- ii. The applicant shall provide his permanent address to the Trial Court, and also the address where he will be residing during the pendency of the case;
- iii. The applicant shall intimate the Investigating Officer (IO) and file an affidavit before the Trial Court regarding any change in his residential address;
- iv. The applicant shall furnish his mobile number to the Investigating Officer (IO)/Station House Officer (SHO) concerned, which shall



2026:DHC:8518



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 shall report to the IO as and when called upon to do so;
 - vi. The applicant shall not, directly or indirectly, contact any prosecution witness or their family members;
 - vii. 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;
 - viii. The applicant shall appear before the Trial Court on each and every date of hearing;
 - ix. The applicant shall not indulge in any criminal activity during the period of bail;
 - x. The applicant shall report to the concerned SHO on the first Monday of every month at 11:00 A.M. and be discharged by 12:00 P.M., after his presence is recorded and the necessary formalities are completed; and
 - xi. During the pendency of the trial, the applicant shall report to the IO at the concerned police station every Monday between 11:00 A.M. to 01:00 P.M.
32. If any of these conditions is breached, it shall be open to the State to seek cancellation of bail.



2026:DHC:8518



33. The present application is disposed of in the above terms. Pending application(s), if any, also stand disposed of.

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

35. 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.

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

SACHIN DATTA, J

SEPTEMBER 29, 2026/cl,sd