



2025:DHC:4951

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

% Judgment delivered on: 11.06.2025

+ **BAIL APPLN. 1136/2025**
RAVINDER BHUIYANApplicant

versus

STATE NCT OF DELHIRespondent**Advocates who appeared in this case:**

For the Applicant : Mr. Mohit Yadav, Adv.
For the Respondent : Mr. Ajay Vikram Singh, APP for the State
with SI Jitender, PS Sarai Rohilla Rly.
Station with IO/SI Vinod Kumar,
DIU/Rohini.

CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN**JUDGMENT**

1. The present application is filed seeking regular bail in FIR No. 41/2022 dated 26.12.2022, registered at Police Station Sarai Rohilla, for offence under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act'). Chargesheet has already been filed against the applicant for the offence under Section 18 of the NDPS Act and Sections 147/179 of The Railways Act, 1989.
2. It is alleged that on 26.12.2022, the complainant, namely, SI Rohit Kumar Rana, who was patrolling at Platform No.2-3 at Shakur Basti Railway Station, noticed two persons sitting on a bench who, upon seeing the police officials, started walking speedily. It is alleged the said suspected persons were detained after a brief chase.



3. It is alleged that the applicant had a white bag in his hand which also had two transparent polythene bags in it. It is alleged that 3.086 Kg of Opium was recovered from the said polythene bags.

4. It is alleged that co-accused Ravinder was holding a saffron *gamchha* (towel) in which some heavy items were tied in a knot. It is alleged that on checking, it was found that the towel had two transparent polythene bags. It is alleged that a total of 2.330 Kg of Opium was recovered from the same.

5. It is the prosecution's case that the accused persons stated in their disclosure statements that they used to work as labourers, however, they did not earn enough to fulfill their requirements. They stated that they had been tasked to deliver the contraband to a man in Bathinda, Punjab by one person, namely, Vinod Paswan. It is alleged that Vinod Paswan had given the contraband to the accused persons on 25.12.2022 near Bus Stand of Hunter Ganj, Jharkhand. Thereafter, the accused persons had travelled to Delhi where they were intercepted by the police officials.

6. The bail application filed by the present applicant before the learned Trial Court was dismissed on 03.02.2025.

7. The learned counsel for the applicant submitted that the applicant has deep roots in the society and has clean antecedents.

8. He submitted that the applicant is the sole bread earner in his family and belongs to lower strata of the society.

9. He submitted that the investigation in the present case is complete and chargesheet has been filed, however, the charges are yet



to be framed. He stated that the prosecution has named 15 witnesses and the trial is not likely to be completed in near future.

10. He submitted that the search and seizure, in the present case, is also riddled with anomalies. He submitted that although the recovery was effected in a public place, no independent witness was joined by the prosecution and no photography or videography was done either.

11. He further submitted that co-accused Vinod has already been enlarged on bail by this Court by order dated 25.04.2024.

12. *Per Contra*, the learned Additional Public Prosecutor ('APP') for the State opposed the grant of any relief to the applicant in the present matter and submitted that the allegations against the applicant are serious in nature since commercial quantity of illegal substance (Afeem) weighing 3.086 Kg has been recovered from the applicant.

13. He submitted that in the present case the recovery has been effectuated directly from the applicant.

ANALYSIS

14. It is settled law that the Court, while considering the application for grant of bail, has to keep certain factors in mind, such as, whether 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; etc. However, at the same time, period of incarceration is also a



relevant factor that is to be considered.

15. It is unequivocally established that, to be granted bail, the accused charged with offence under the NDPS Act must fulfill the conditions stipulated in Section 37 of the NDPS Act. Section 37 of the NDPS Act reads as under:

“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 27-A 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 oppose 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.”

16. The accusation in the present case is with regard to the recovery of commercial quantity of contraband. Once the rigours of Section 37 of the NDPS Act are attracted, as provided under the Section, the Court can grant bail only when the twin conditions stipulated in Section 37(1)(b) of the NDPS Act are satisfied in addition to the usual requirements for the grant of bail— (1) The court must be satisfied that there are reasonable grounds for believing that the person is not guilty of such offence; and (2) That the person is not likely to commit any



offence while on bail.

17. In the present case, the applicant has essentially sought bail on the ground of non-joinder of independent witnesses as well as delay in trial. It is further argued that lack of photography or videography to support the recovery casts a doubt on the case of the prosecution.

18. This Court in the case of *Bantu v. State Govt of NCT of Delhi: 2024: DHC: 5006* has observed that while the testimony of independent witness is sufficient to secure conviction if the same inspires confidence during the trial, however, lack of independent witnesses in certain cases can cast a doubt as to the credibility of the prosecution's case.

19. It was held that when the Investigating Agency had sufficient time to prepare before the raid was conducted, not finding the public witness and lack of photography and videography in today's time casts a doubt to the credibility of the evidence.

20. The present case is based allegedly on a chance recovery and it is possible that the Investigating Agency did not get sufficient time to prepare. Undisputedly, the recovery in the present case was made at 2:00 PM at Shakur Basti Railway Station in a crowded and busy area. However, given the crowded nature of the place from where the recovery was made, it is peculiar that no public witness has joined the search proceedings.

21. The effort, if any, made by the prosecution to have the search conducted in the presence of the independent witnesses or explanation for no photography or videography would be tested during the course



of trial. However, while the absence of the same may not be fatal to the case of the prosecution, at this stage, the benefit cannot be denied to the accused.

22. Even otherwise, insofar as the rigours of Section 37 of the NDPS Act are concerned, it is relevant to note that the applicant is in custody since 26.12.2022. The chargesheet has already been filed, and the applicant is no longer required for custodial interrogation. It is pertinent to note that the charges are yet to be framed in the present case. It cannot be denied that the applicant has spent substantial period in custody, and the investigation is complete. It is also undisputed that the applicant has clean antecedents.

23. It is trite that grant of bail on account of delay in trial and long period of incarceration cannot be said to be fettered by the embargo under Section 37 of the NDPS Act. The Hon'ble Apex Court, in the case of *Mohd. Muslim v. State (NCT of Delhi) :2023 SCC OnLine SC 352* has observed as under:

“21....Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (ref. Satender Kumar Antil supra). Having regard to these factors the court is of the opinion that in the facts of this case, the appellants deserve to be enlarged on bail.

22. Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable. Jails are overcrowded and their living conditions, more often than not, appalling. According to the Union Home Ministry's response to Parliament, the National Crime Records Bureau had recorded



that as on 31st December 2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,069 lakhs in the country²⁰. Of these 122,852 were convicts; the rest 4,27,165 were undertrials.

23. The danger of unjust imprisonment, is that inmates are at risk of “prisonisation” a term described by the Kerala High Court in *A Convict Prisoner v. State*²¹ as “a radical transformation” whereby the prisoner:

“loses his identity. He is known by a number. He loses personal possessions. He has no personal relationships. Psychological problems result from loss of freedom, status, possessions, dignity any autonomy of personal life. The inmate culture of prison turns out to be dreadful. The prisoner becomes hostile by ordinary standards. Self-perception changes.”

24. There is a further danger of the prisoner turning to crime, “as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal”²² (also see Donald Clemmer’s ‘The Prison Community’ published in 1940²³). Incarceration has further deleterious effects - where the accused belongs to the weakest economic strata : immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials - especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily.”

(emphasis supplied)

24. The Hon’ble Apex Court in ***Rabi Prakash v. State of Odisha*** : **2023 SCC OnLine SC 1109**, while granting bail to the petitioner therein held as under :

“4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent - State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are



*reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. **The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.***

(emphasis supplied)

25. The object of jail is to secure the appearance of the accused during the trial. The object is neither punitive nor preventive and the deprivation of liberty has been considered as a punishment. Various courts have recognized that prolonged incarceration undermines the right to life and liberty, guaranteed under Article 21 of the Constitution of India, and therefore, conditional liberty must take precedent over the statutory restrictions under Section 37 of the NDPS Act.

26. In view of the aforesaid, this Court is of the opinion that the applicant has made out a *prima facie* case for grant of bail on the ground of absence of independent witnesses, no photography or videography of the recovery and prolonged delay in trial.

27. The applicant is also stated to be of clean antecedents, and is thus not likely to commit any offence whilst on bail.

28. In view of the above, the applicant is directed to be released on bail on furnishing a personal bond for a sum of ₹20,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court, on the following conditions:

a. 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;

b. The applicant shall under no circumstance leave the country without the permission of the learned Trial Court;

c. The applicant shall appear before the learned Trial Court on every date of hearing, unless his appearance is exempted;

d. The applicant shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;

e. The applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.

29. In the event of there being any FIR/DD entry / complaint lodged against the applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

30. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

31. The present bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

JUNE 11, 2025