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

Date of Decision: 10.07.2025

+ BAIL APPLN. 2799/2024
KHUSHI RAM GURUNG

.....Petitioner

Through: Mr Shubhendra Aggarwal,
Mr. Bijender Singh & Mr. Raj
Kumar Barathwal, Advocates

versus

THE STATE GOVT. OF N.C.T. OF DELHIRespondent
Through: Ms. Meenakshi Dahiya, APP
for State with SI Manish Kumar

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

SHALINDER KAUR, J (ORAL)

1. The present petition has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, seeking the grant of Regular Bail in FIR No. 38/2022 dated 27.03.2022, registered under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter "NDPS Act") at Police Station Crime Branch, Delhi.

PROSECUTION'S CASE

2. On the night of 26.03.2022, ASI Sanjay Kumar, posted with the NRI/Crime Branch, received secret information that one Nepali national, namely Khushi Ram (petitioner), who was involved in the sale of *charas* in Delhi, would arrive at Jharoda Burari Road, on the right side of Sant Nagar Marg Chowk, near the drain at Burari



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flyover, Ring Road, Delhi, to deliver a consignment of *charas* to an unknown person. The information further indicated that if a raid was promptly conducted, the said individual could be apprehended with the contraband in his possession.

3. The secret information was immediately shared with senior officers, and requisite permission under Section 42 of the NDPS Act was obtained. A raiding team was thereafter constituted under the supervision of ASI Sanjay Kumar. The team departed the office of the Crime Branch at 11:29 PM on 26.03.2022 *vide* DD No. 0067A, and proceeded towards the identified location.

4. Upon reaching the spot at about 11:50 PM, efforts were made to include 3–4 public witnesses in the raid, but none agreed to join due to personal reasons. In view of the urgency of the situation and the risk of the suspect absconding, no formal notice was issued to the public persons.

5. At about 12:30 AM on 27.03.2022, acting on the signal of the informer, the raiding team apprehended the petitioner, aged 24 years, who was carrying a blue and grey bag slung over his shoulder.

6. Compliance with Section 50 of the NDPS Act was ensured. A notice under Section 50 NDPS Act was served upon the accused, and the meaning and import of being searched in the presence of a Magistrate or a Gazetted Officer were explained to him. However, the accused declined the said option. He also refused to search the police party or their vehicle.



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7. A search of the accused's person and the bag he was carrying was then conducted, which led to the recovery of a blackish-brown substance suspected to be *charas*. The substance was tested on the spot using the field-testing kit and returned a positive result for cannabis. The substance was weighed using an electronic weighing machine and found to weigh 1510 grams, which falls within the commercial quantity as defined under the NDPS Act.

8. A parcel (*pulanda*) was prepared from the recovered *charas*, wrapped in white cloth, and sealed with the seal of "S.K." A seizure memo was prepared, and the seal after use was handed over to HC Trish Pal. The SHO Crime Branch also affixed his seal marked "VPD" on the *pulanda*. The sealed parcel and relevant documents were handed over to Ct. Sandeep for deposition in the *Malkhana* and for registration of the case.

9. The subject FIR was then registered at PS Crime Branch. The investigation was transferred to SI Manish Kumar, who reached the spot at around 2:20 AM on 27.03.2022, met ASI Sanjay Kumar, collected the case documents and custody of the accused, and prepared the site plan on the spot.

10. The accused was thereafter arrested. His personal search was conducted, and his disclosure statement was recorded, wherein he admitted to having supplied *charas* in Delhi. He disclosed that he had come to Delhi to deliver *charas* on behalf of one Anjali, a woman based in Nepal, who is also allegedly engaged in the trafficking of



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narcotic substances. He further admitted that he had previously supplied 1.5 kg of *charas* to one Inder Bahadur Magar, R/o Letang-5, Morang, Koshi, Nepal, who was stated to be residing at H. No. 109, IInd Floor, Gali No. 2, Govind Puri, Delhi.

11. During police custody, efforts were made to trace both the source (Anjali) and the intended recipient (Inder Bahadur Magar). A search was conducted at the said Govind Puri address in the presence of the landlord Mr. Ashok Khurana. Though the accused was not found, a Nepali driving license and citizenship certificate bearing the name Inder Bahadur Magar were recovered from the premises. The accused identified the photograph on these documents as belonging to the recipient of the contraband.

12. On 29.03.2022, an application under Section 52A of the NDPS Act was moved before the learned CMM, Tis Hazari Courts, seeking permission to draw samples. The application was marked to the learned MM (Reliever). On 30.03.2022, in the presence of the learned MM and the accused, two samples, marked "A" and "B", were drawn and sealed using the Court seal "BK". The main parcel was also resealed under Court supervision.

13. On 31.03.2022, the sample marked "A" was deposited at the Forensic Science Laboratory (FSL), Rohini, for chemical analysis. The FSL report, bearing No. SFSL DLH/3527/CHEM/1074/22, was received on 28.06.2022 and confirmed that the substance was *charas* upon physical, microscopic, chemical and TLC analysis.



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14. The petitioner preferred a Bail Application before the learned Additional Sessions Judge on 30.07.2024, which came to be dismissed, compelling the petitioner to file the present petition.

15. The learned counsel for the petitioner submits that the petitioner has been in Judicial Custody for a about 3 years and 3 months as on date and out of a total of fifteen witnesses, only two formal witnesses have been examined.

16. The learned counsel submits that no public witnesses were made a part of the present proceedings. Further, compliance with Section 50 of the NDPS Act was not made, as the petitioner was not searched in the presence of a Metropolitan Magistrate or Gazetted Officer.

17. The learned counsel further submits that the source where the petitioner allegedly recovered the *charas* from has not been verified. To conclude, he submits that keeping in view the period of incarceration already undergone by him, in addition to his clean antecedents, he be granted bail.

18. Opposing the grant the grant of Bail, the learned APP for the state submits that a commercial quantity of *charas*, weighing 1510 grams was recovered from the petitioner and therefore, the bar under Section 37 of the NDPS would apply in the present case.

19. The learned APP submits that the petitioner was duly served with a Notice under Section 50 of the NDPS Act, however, he refused to have his search conducted in the presence of a Metropolitan



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Magistrate or Gazetted Officer. In view of the quantity recovered at the behest of the petitioner, he submits that the bail application be rejected.

20. Having heard the learned counsel for the petitioner, the learned APP for the State as well as perused the record. At the outset, it may be noted that the petitioner is stated to have been apprehended on 27.03.2022 pursuant to secret information received by the Crime Branch, Delhi, and was allegedly found in exclusive and conscious possession of 1510 grams of *charas*, which falls under the category of commercial quantity under the NDPS Act. The rigours of Section 37(1)(b) of the NDPS Act, therefore, stand attracted in the present case.

21. It is a settled proposition that for bail to be granted in cases involving commercial quantity of narcotics, the twin conditions under Section 37 of the NDPS Act must be satisfied: (i) the Court must be satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence; and (ii) that he is not likely to commit any offence while on bail. These conditions are in addition to the general considerations governing the grant of bail.

22. In the present case, the recovery of 1.5 kilograms of *charas* from the petitioner's possession, as reflected in the seizure memo, could not be discredited at this stage. The petitioner was apprehended at the spot on the basis of prior information. Upon search of the bag carried by him, the contraband was recovered, and the same



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was later confirmed to be *charas* upon testing by the FSL. The petitioner was served with notice under Section 50 NDPS Act and had declined the option of being searched in the presence of a Magistrate or Gazetted Officer.

23. The petitioner, during police custody, is stated to have led the investigating team to the premises at Govind Puri, allegedly occupied by one Inder Bahadur Magar, the intended recipient of the contraband, who is also a Nepalese national and has since remained untraceable. Documents such as a Nepali driving license and citizenship certificate recovered from the said premises were identified by the petitioner as bearing the image of the co-accused. It is evident, therefore, that the petitioner was not a passive carrier but was well aware of the destination and recipient of the contraband.

24. As regards the petitioner's personal circumstances, it is not disputed that the petitioner is a Nepalese national and does not have a permanent address in Delhi. The absence of any local roots or verifiable place of residence within the jurisdiction of this Court enhances the apprehension of the petitioner being a flight risk, particularly when the investigation indicates trans-border links. In the event of his release on bail, ensuring his presence during trial proceedings would pose a serious challenge.

25. While it is correct that the petitioner has been in custody for over 3 years and 3 months, and there has been a noticeable delay in recording the testimonies of prosecution witnesses, such delay, in the



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facts of the present case, cannot override the statutory embargo contained in Section 37 of the NDPS Act, especially when the recovery is of commercial quantity and the petitioner has failed to demonstrate that he is not *prima facie* guilty of the alleged offence.

26. In view of the statutory bar under Section 37 of the NDPS Act, the nature and quantity of the contraband recovered, and the fact that the petitioner is a foreign national without a local address, this Court does not find it a fit case for grant of regular bail.

27. Accordingly, the present bail application is dismissed.

SHALINDER KAUR, J

JULY 10, 2025/r/FRK