



2025:DHC:6090



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

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Date of decision: 25th July, 2025

+ BAIL APPLN. 4070/2024

NAVEEN HANDA

.....Petitioner

Through: Ms. Mercy Hussain, Mr. Nitin Narang and Ms. Kirti Singh, Advocates.

versus

CENTRAL BUREAU NARCOTICS

.....Respondent

Through: Mr. Satish Aggarwala, Senior Standing Counsel with Mr. Gagan Vaswani, Advocate.

CORAM:

HON'BLE MR. JUSTICE ARUN MONGA

ARUN MONGA, J. (Oral)

1. Claiming himself to be falsely implicated, the applicant herein, a licensee under the Drugs and Cosmetics Act, 1940 and carrying out the business of drugs and medicines (scheduled under NDPS Act), is before this Court seeking bail for alleged offences committed under Sections 21, 22, 29 and 30 of Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act'), for which a case has been registered by Central Bureau of Narcotics of Delhi bearing No.PDI/DEL/Seizure/4/2024.

2. Succinct facts as pleaded in the bail application are as follows: On 13.02.2024, a team of inspectors from the Central Bureau of Narcotics



2025:DHC:6090



(CBN), New Delhi, conducted a search at the premises of M/s Vin Healthcare in the absence of the applicant. A personal search of all individuals present yielded no incriminating material. The team then inspected the stock of NDPS medicines and found discrepancies between the recorded stock and the actual inventory.

2.1. In light of these discrepancies, the applicant was informed of his rights under Section 50 of the NDPS Act. He gave written consent for a search. A detailed search of the premises led to the seizure of various NDPS drugs, which were sealed, labelled, and documented in the seizure memo. Separate lists were prepared for retail and wholesale stock, both showing significant mismatches. Two hard drives containing stock records were also seized from the shop's computers.

2.2. Next day, on 14.02.2024, at approximately 18:00 hours, the applicant was arrested after being informed of the reasons for his arrest i.e. mismatch in the inventory. A personal search memo was prepared, and the arrest was formally recorded. The arrest documents were submitted to the Superintendent of the CBN at 20:00 hours the same day. Summons under Section 67 of the NDPS Act were also issued for his examination.

2.3. The investigation allegedly revealed substantial discrepancies between the stock records submitted by the applicant and the actual quantities of NDPS medicines found. Criminal complaint was filed before the competent court and the trial is pending at Patiala House, New Delhi, at the stage of miscellaneous appearance. Learned Trial court has taken cognizance under Section 22 of the NDPS Act vide an order dated 29.10.2024.



2025:DHC:6090



3. The stand taken by the prosecution/Central Bureau of Narcotics is that, the officers of Central Bureau of Narcotics recovered and seized 12592 Fentanyl Injections, 2353 Fentanyl Patches, 4540 Morphine Sulphate injections, 16510 Morphine Sulphate Tablets, 610 Diazepam Injections, 8080 Pentazocine Injections, 3820 Tramadol Injections, 675 Ketamine Injections, 226 Buprenorphine patches, 800 Buprenorphine tablets, 325 Midazolam injections, 1250 Remifentanyl Injections and 50 Pethidine injections from the premises, vide panchnama dated 13.02.2024 under the provisions of NDPS Act, 1985.

3.1. In his voluntary statement dated 14.02.2024 tendered under Section 67 of the NDPS Act, the applicant inter-alia corroborated the above said recoveries and other incriminating facts. Moreover, the applicant accepted to have supplied NDPS medicines to the illicit market by creating fake demand drafts, medical prescriptions and invoices/bills. He was thus arrested and was explained the grounds of his arrest.

4. The applicant filed the regular bail application before Special Judge, (NDPS) Patiala House Court, New Delhi and the same was dismissed vide order dated 06.09.2024.

5. In the aforesaid backdrop, I have heard the rival contentions and perused the case file.

6. Bail application is primarily being opposed on the ground of applicant failing the 'twin test' under Section 37 of the NDPS Act, 1985. Furthermore, emphasis is also on the voluntary statement dated 14.02.2024 wherein applicant has allegedly admitted the aforesaid



recovery from his premises when the raid was conducted by Central Bureau of Narcotics.

7. Ms. Mercy Hussain, learned counsel for the applicant would strenuously argue that it is not even the case of the prosecution that the applicant is not a valid licensee under the Drugs and Cosmetics Act, 1940. Moreover, the license issued to the applicant by the competent licensing authority was duly got verified by Central Bureau of Narcotics and it was found to be in accordance with law.

7.1. She would also cite judgment rendered by the Supreme Court in *Pankaj Bansal versus Union of India and Others*¹, and argue that grounds of arrest have to be separately served on a detenu. Mere conveying reasons of arrest do not suffice. Any violation thereof is a breach of the fundamental rights as envisaged under Articles 21 and 22 of Constitution of India. Merely reading out reasons or grounds of arrest is not an adequate compliance of the mandate under Article 22(1) *ibid* and, thereafter, judicial custody of applicant is not sustainable, she urges.

7.2. She would also contend that procedure envisaged under Section 51/52A of the NDPS Act is sacrosanct and any violation thereof vitiates not only the arrest caused by the prosecution but even the entire trial itself. She would submit that in the present case, there has been blatant violation of the statutory procedure as no inventory as envisaged thereunder was prepared by the Central Bureau of Narcotics officials.

7.3. Learned counsel for the applicant would also lay emphasis on the fact that the entire prosecution herein is malicious as would be borne out

¹ (2024) 7 SCC 576.



from the contents of the complaint filed by the prosecution before the trial court. Referring to para 4 of the complaint she would argue that in the complaint it is the conceded case of the prosecution that real accused is one name Mr. Venkatesh Reddy, but yet no action whatsoever has been taken till date against the said accused. Per prosecution version, said Venkatesh allegedly helped applicant set up the business and also supplied medicines on a long term credit. Venkatesh Reddy has two firms including Vin Healthcare that was set up along with applicant and was raided. Which led to the arrest of the applicant.

7.4. She would also point out that the applicant was arrested on 14.02.2024 and has been in custody ever since i.e. more than one year and five months. She states that after filing of the complaint by the prosecution even the charges have been framed and thus no further custodial interrogation of the applicant is required as the investigation is complete and the trial has commenced. She would also point out that applicant has no criminal antecedents or history of any violation of either Drugs and Cosmetics Act or NDPS Act in the past despite being in this business for a very long time i.e. for more than 14 years.

8. Opposing the aforesaid arguments, Mr. Satish Aggarwala, learned counsel appearing for Central Bureau of Narcotics, at the very outset, points out that the reference to the Venkatesh Reddy not being summoned is totally misplaced. He would state that not only he was summoned but even his statement was also duly recorded.

8.1. Learned counsel further argues that the stringent requirements of Section 37 of the NDPS Act, including the twin conditions for bail, are



applicable in this case. Basis thereof, the applicant is not entitled to any concession of bail. He contends that the applicant has been forging doctors' prescriptions and illegally selling drugs in violation of the conditions of his license. It is also submitted by him that the procedure under Section 52 of the NDPS Act was duly followed and that the applicant was also orally informed of the grounds of his arrest.

8.2. In support of his submissions, counsel refers para 3 of the reply to the application and also the tabulated inventory included in the complaint, which highlight mismatch between the permissible quantity and the actual quantity of drugs found. He argues that this discrepancy, along with the presence of fake invoices and demand drafts, clearly indicates that the applicant was engaged in the illicit sale of drugs, misusing his license under the Drugs and Cosmetics Act.

8.3. The learned counsel for the respondent inter alia refers to the judgment rendered in case of *Narcotics Control Bureau vs. Kashif*², citing para 39 in particular. He argues that the NDPS Act must be interpreted strictly in line with its scheme, object, and societal impact, rather than liberally, to avoid undermining its purpose. Courts, when considering bail, must adhere to the mandatory requirements of Section 37, including recording specific findings. Section 52 non-compliance or delayed compliance amounts only to procedural irregularity and is not a ground for bail or invalidation of trial. Similarly, procedural lapses during search and seizure do not automatically render evidence inadmissible unless serious prejudice to the accused is shown. Therefore, procedural

² 2024 SCC OnLine SC 3848.



irregularities alone do not justify bail.

8.4. He would also cite judgments rendered in *Union of India vs. Khalil Uddin*³ and *Narcotics Control Bureau vs. Mohit Aggarwal*⁴ and urge that the term “reasonable grounds” in Section 37(1)(b) means credible and plausible reasons for the court to believe that the accused is not guilty. Facts ought to be such which convince the court that the accused likely did not commit the offence, along with credible reasons that the accused will not commit repeat offence if granted bail, he contends.

8.5. Qua reliance by learned counsel for the applicant on Pankaj Bansal (*Supra*) he informs that vide a subsequent order passed by Supreme Court in *Mihir Rajesh Shah vs. State of Maharashtra and Anr.*⁵ while noting the question of law dealt therein, has referred the same to a larger bench.

9. Having heard the arguments as above and after perusal of the case file I am of the view that it is a fit case for bail. Let us see how.

10. The prosecution’s justification, at this stage, for keeping the applicant in custody rests primarily on the alleged discrepancy in the drug inventory, as documented in the complaint submitted to the trial court.

11. First and foremost, advertent to the first test envisaged under section 37 of the NDPS i.e. credible reasons for the court to believe that the accused is not guilty. Bail is opposed on the premise that the inventory mismatch indicates illicit sale of drugs, thereby invoking the stringent conditions of Section 37 *ibid* of the NDPS Act. However, pertinently, the prosecution does not challenge the validity or legality of the applicant’s

³ 2022 SCC OnLine SC 2109.

⁴ AIR 2022 SC 3444.

⁵ SLP (Crl.) No. 17132/2024.



license. Mere possession of drugs or psychotropic substances under a valid license does not, therefore, automatically trigger the NDPS provisions. The prosecution's claim that the mismatch signifies unlawful sale at this stage remains an assertion/ assumption requiring further threadbare scrutiny evidence during the trial. The license (Annexure C) issued to applicant does not specify any quantitative limits, making it unclear whether the alleged mismatch constitutes a violation. Additionally, being tardy or negligent in committing errors or lapses in record-keeping could be possible explanation qua the discrepancies, to be proved during the trial without holding the applicant culpable solely on the basis of mismatch in the inventory disregards the principle of presumption of innocence until proved guilty. Possibility of applicant being kept under incarceration/penalized by treating the potential clerical negligence as a criminal act cannot be ruled out.

12. It is also noteworthy that the license also lists two persons i.e. the accused herein and Ms. Neha Bedi as the technical member. She also thus appears to be responsible for the oversight, if any, in maintaining the inventory. Joint names on the license are suggestive that responsibility for inventory is/was a shared one. It is pertinent to note that prosecution has found no evidence implicating Ms. Bedi. Singling out the applicant for custody based solely on inventory found at his premises, appears to be iniquitous at this stage.

13. Moreover, conceded version of the prosecution is that Venkatesh Reddy, who set up Vin Healthcare along with applicant/accused and supplied drugs/psychotropic substance, was though summoned and his



2025:DHC:6090



statement was recorded , but no evidence was found against him, creates a cloud on the further preventive custody of the accused herein.

14. Adverting now to the second “twin test” under Section 37 i.e. to assess the likelihood of repeat offence if bail is granted, the same also does not seem to apply. The prosecution acknowledges the applicant has no criminal record and a clean history. With over a decade of experience in this regulated industry, the applicant’s past conduct has been lawful and transparent. These factors strongly suggest that he poses no flight risk or threat of repeat offence. There has to be a balance between the need for custody in larger interest of the society and justice vis a vis with the protection of individual liberty.

15. Apart from the above, significant procedural violations cannot be simply overlooked, as they go to the very root of the matter. In this case, it is admitted that the grounds of arrest were not formally communicated, although the prosecution claims they were conveyed verbally—a claim disputed by the applicant. Regardless, it is undisputed that there is no proof that the grounds of arrest were properly conveyed to either the accused or his family at the time of arrest. Since this is a statutory right under the NDPS Act and a constitutional guarantee under Article 22, any such violation is a serious issue. It serves as a contributory ground for the accused or an under trial to seek release during the trial.

16. As regards any apprehension of tampering with the evidence, it is not disputed that it is all documentary in nature coupled with the inventory which have already been seized by the prosecution. The same is beyond the reach of the applicant. Therefore, there is no probability of his



2025:DHC:6090



tampering with it, being under the seizure and possession of the prosecution/trial court. As regards influencing the witnesses, they are formal in nature and officials of the prosecution/Central Bureau of Narcotics and thus, even on that count there is no bar on granting concession of bail to the applicant. The voluntary/confessional statement made by the accused while in custody qua his admission of selling the drugs/medicine in the illicit market also has to be viewed with certain circumspection. Be that as it may, on the basis of mere suspicion and/or custodial confession yet to be proved, the accused ought not to be kept in preventive custody all throughout the trial.

17. Furthermore, at the time of filing of reply, bail was though being opposed *inter alia* on the ground that the charges were yet to be framed, as has been stated in paragraph 3(d) thereof. But, in course of hearing today, on a court query to the prosecution it is borne out that now even charges have also been framed by the trial court.

18. Trial has since already commenced. Investigation is over. No further custodial interrogation is required qua the any further interrogation. The current custody of the applicant is merely preventive in nature. The purpose of preventive custody is to ensure that evidence is not tampered with, witnesses are not influenced, there being high chances of conviction of the accused and to prevent him from committing repeat offence. On all counts, for the reasons stated in the preceding part, I am of the *prima facie* view that the accused/applicant is entitled to bail as the applicant has made out a case for grant of bail.

19. Accordingly, the application is allowed. Applicant is directed to be



2025:DHC:6090



released on bail on furnishing of bail bond and surety to the satisfaction of the learned Trial Judge/ Duty Judge as the case may be and subject to the usual conditions to be imposed by the learned trial Judge/Duty Judge.

20. Nothing observed hereinabove shall amount to an expression on the merits of the case and shall not have a bearing on the trial of the case as the same is only for the purpose of the disposing of the present bail application. In case applicant is found involved in any repeat offence while on bail, the prosecution shall be at liberty to seek cancellation of the bail granted to the applicant in the present case vide instant order.

ARUN MONGA, J

JULY 25, 2025

kd/rs