



2025:DHC:7652



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

% *Date of decision: 1st September, 2025*

+ **BAIL APPLN. 1389/2025**

GULAM NABI

.....Petitioner

Through: Mr. Srikant Singh, Mr. Mukesh Kumar, Mr. Srajan.S.Kulshrestha, Advocates.

versus

GOVT OF NCT OF DELHI THROUGH SHORespondent

Through: Mr. Utkarsh, APP for the State.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. Bail Application under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, has been filed on behalf of the Petitioner/Applicant, **Gulam Nabi**, in FIR No. 453 of 2023 registered under Section 21/29/61/85 Narcotic Drugs and Psychotropic Substances Act, 1985 (*hereinafter referred to as "NDPS Act"*).

2. **Briefly Stated**, on 25.09.2023, on the basis of secret information a raiding team was constituted, which at around 7:45 PM, found the co-accused Danish who was carrying a pink-coloured foil in his right hand, going towards the house of Rafikul Malik @ Babu, in Lane No. 7, Ghazipur Dairy Farm, Delhi. Thereafter, Rafikul Malik @ Babu came out of his house and had some



brief conversation. Danish then handed over the pink-coloured foil to Rafikul Malik @ Babu, which he checked and kept in his pocket. Immediately, the raiding team apprehended both co-accused Danish and Rafikul. On the search of Rafikul Malik @ Babu, the light-coloured pink foil was recovered which was a powder-like substance which was found to be **Heroin (Smack)** with a total weight of **270 grams**.

3. Upon interrogation, co-accused Danish revealed that he was supplying smack in Delhi on the instruction of one **Raees** and his son **Salim** who in turn were obtaining it from the **Applicant, Gulam Nabi**.

4. Thereafter, on the intervening night of 27-28.09.2023, a raid was conducted at Kalandar Colony, Seema Puri, Delhi, where one co-accused, **Zarina** was also apprehended while selling smack on the spot, and 52 grams of Heroin was recovered from her possession; she was arrested.

5. On 29.09.2023, the Applicant, Gulam Nabi was apprehended near Meerganj Town on the way towards Delhi on Delhi-Bareilly Road, on a white Apache bike without a number plate. Upon search of the Applicant and his bike, a *black foil wrapped with khaki tape was found under the seat of the bike*. When opened and checked, a *light pink-coloured powdery substance was found, which was detected to be Heroin (Smack)*. The weight of the recovered substance was found to be **500 grams**. *The present Applicant was arrested.*

6. During further investigation, one person **named Mahesh** was also arrested on the disclosure of co-accused, Rafikul, and **92 grams** of Heroin was recovered.

7. The present Applicant was interrogated, where he revealed that he was involved in the business of Heroin preparation which he procures from one



2025:DHC:7652



Sanjay Shah, who was later apprehended from Sasaram, Bihar, on 08.10.2023.

8. The Applicant has sought Regular Bail under Section 439 Cr.P.C., before the Ld. ASJ, which was dismissed *vide* Order dated 21.03.2024.

9. The Bail is sought on the ground that the Chargesheet has been filed against the Applicant under Section 21 & 29 of the NDPS Act, and the cognizance has been taken on 22.03.2024. A total of 20 witnesses has been named by the Prosecution, and the trial has not started yet. Applicant is in Judicial Custody since 29.09.2023 and the trial has not started till date, which is likely to take some time. No purpose would be served by keeping him in custody.

10. It is further asserted that he is innocent and has nothing to do with the allegations levelled against him. There is neither any telephonic connectivity nor any financial transaction between the co-accused(s) and the Applicant, who was arrested solely on the basis of the disclosure of the co-accused Danish. The Applicant has no criminal history and no recovery has been made from him.

11. It is claimed that there is no cogent evidence against the Applicant except the statement of co-accused Danish. Reliance has been placed on *Toofan Singh v. State of Tamil Nadu*, 2021 (4) SCC 1, wherein it was held by the Apex Court that a confession made to any police officer cannot be used as evidence against a person accused of an offence.

12. It is further submitted that the provisions of *Sections 42 and 50* NDPS Act have not been complied and the Prosecution has also failed to prove any recovery from the Applicant. The signatures of the Applicant were taken on a blank paper, and he was not searched before any gazetted officer.



13. It is also asserted that the *Applicant fulfils the twin conditions of Section 37 of the NDPS Act*; that there are reasonable grounds for believing that the Petitioner is not guilty of such offences and that he is not likely to commit any offence if admitted on Bail. The rigor of Section 37 NDPS Act would not come in the way in such a case.

14. It is further submitted that there should be a presumption of innocence on the basis of the principle of “*Bail is the rule and jail is the exception.*” Reliance is placed on *Union of India v. Shiv Shankar Keshari*, (2007) 7 SCC 789, wherein it was observed by the Apex Court that while considering the Application for Bail with reference to Section 37 of the NDPS Act, the Court 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 if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. The Court is not required to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty.

15. Similarly, reliance has been placed on *State of Kerala v. Rajesh, Crl. Appeal No. 154-157/2020* dated 24.01.2020, and *State of Madhya Pradesh v. Kajad*, (2001) 7 SCC 673.

16. Moreover, the co-accused Zarina and Sanjay Shah, have been granted Bail by the Ld. ASJ *vide* Order dated 17.10.2023 and 07.12.2023, respectively.

17. *Accordingly, it is prayed that the Applicant, Gulam Nabi be admitted to Bail.*

18. *Status Report has been filed on behalf of the Respondent/State*, where the facts and details leading to the arrest of the present Applicant have



2025:DHC:7652



been stated. It is also stated that the chargesheet has been filed against the Applicant for the offences under Section 21/29 of the NDPS Act. There are total 20 Prosecution witnesses, and the case is at the stage of arguments on Charge.

19. The Bail Application is *opposed on the grounds* that the Applicant was apprehended with a substantial quantity of 500 grams of smack. There are substantial grounds to believe that the recovery of the substances was not accidental and raises serious concerns regarding the involvement of the accused in illicit drug trafficking activities. The gravity of the offence, the potential threat to society posed by drug trafficking, and the need to prevent the Accused from influencing the witnesses, are also asserted.

20. *The Bail Application is accordingly, opposed.*

Submissions heard and record perused.

21. The case of the Prosecution is that pursuant to the disclosure statement of the co-accused Danish, Applicant was apprehended while going on a white Apache bike without a number plate, and recovery of *500 grams of Heroin (Smack)* was made from his bike.

22. The *first ground* on which the Applicant has sought Bail is that he fulfils the twin conditions as mandated under Section 37 of the NDPS Act, i.e. that there is a possibility that he has not committed the offence and that he is not likely to commit any offence, if he is admitted to Bail.

23. The Applicant was apprehended and a recovery of commercial quantity of *500 grams of Smack has been made*, and therefore it cannot be said that prima facie there is nothing to show that he not committed the crime, is completely untenable. Furthermore, the disclosure of on co-accused has led to other co-accused and the Applicant, thereby prima facie establishing a drug



2025:DHC:7652



syndicate. It cannot be said that, there is no likelihood of his committing the offence in future.

24. The **second contention** raised by the Applicant is that no compliance under Section 50 NDPS Act has been made. As far as this ground is concerned, according to the I.O., the option was given to the Accused to get his search conducted, but he refused to allow his search by the nearest gazetted officer or magistrate. Also, it cannot be overlooked that whether procedural compliances were duly made, is a matter of trial which cannot, at this stage, falsify the case of the Prosecution and thereby entitle him to Bail.

25. The Apex Court in Narcotics Control Bureau v. Kashif, (2024) 11 SCC 372, has observed as under;

50.5. Any procedural irregularity or illegality found to have been committed in conducting the search and seizure during the course of investigation or thereafter, would by itself not make the entire evidence collected during the course of investigation, inadmissible. The court would have to consider all the circumstances and find out whether any serious prejudice has been caused to the accused.

26. The Division Bench in the case of State of Karnataka vs. Sri Darshan, etc., Crl. Appeal Nos. 3582-3532 / 2025 decided on 14.08.2025, wherein the Apex Court has held that a procedural lapse does not by itself, justify the grant of Bail in cases involving serious offences.

27. The **third ground** on which the Applicant has sought Bail is that the co-accused Zarina and Sanjay Shah, have been granted Bail by the Ld. ASJ *vide* Order dated 17.10.2023 and 07.12.2023, respectively. However, to co-accused **Zarina** was granted Bail as only 52 grams of Heroin which is an intermediate quantity, had been recovered from her. Moreover, she is a very old and frail lady.



28. Similarly, Bail was granted to *Sanjay Shah* as no recovery had been made from him and the only evidence against him was the disclosure made by the co-accused.

29. The other co-accused, Danish and Rafikul from whom recovery was made, are in custody. No parity can be claimed by the Applicant with Zarina and Sanjay Shah, in the aforesaid circumstances.

30. The *next contention* raised is that the Applicant has been in Judicial Custody since 29.09.2023 and the trial is likely to take long, entitling the Applicant to Bail. While it is established from various judgments that delay in conclusion of trial is one of the grounds for Bail, here is a case where **500 grams of Heroin** was recovered from the Applicant.

31. The three Judge Bench of the Apex Court in *Narcotics Control Bureau v. Mohit Aggarwal*, (2022) 18 SCC 374, has observed that *the length of the period of his custody or the fact that the charge-sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the NDPS Act.* Similarly, in *Gurwinder Singh v. State of Punjab*, (2024) 5 SCC 403, the Apex Court has observed that mere delay in trial in grave offences cannot be used as a ground to grant Bail.

32. In *Gobarbhai Naranbhai Singala v. State of Gujarat*, (2008) 3 SCC 775, the Apex Court while relying upon *State of U.P. v. Amarmani Tripathi*, (2005) 8 SCC 21 has observed that long period of incarceration cannot itself be the ground for grant of Bail.

33. Considering the gravity of the offence, and that the charges are yet to be framed, it cannot be said that there is inordinate delay in the trial; rather it is proceeding at its pace.



2025:DHC:7652



34. The Application is, therefore, dismissed. Pending Applications are disposed of accordingly.

**(NEENA BANSAL KRISHNA)
JUDGE**

SEPTEMBER 1, 2025/RS