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

Reserved on: 14.05.2026

Pronounced on:30.05.2026

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+ BAIL APPLN. 601/2026

AKASH KUMAR

.....Petitioner

Through: Mr. Pramod Kumar, Advocate.

versus

NARCOTICS CONTROL BUREAU

.....Respondent

Through: Mr. Arun Khatri, SSC with
Ms.Shelly Dixit, Mr. P. Singh,
Advocates.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

J U D G M E N T

1. By way of the present application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ["BNSS"], the applicant seeks regular bail in connection with NCB Crime No. VIII/09/DZU/2024, registered under Sections 8(c)/18(b)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ["the NDPS Act"].

2. I have heard Mr. Pramod Kumar, learned counsel for the applicant, and Mr. Arun Khatri, learned Senior Standing Counsel for the respondent – Narcotics Control Bureau. The prosecution has placed on record a status report dated 24.02.2026.

A. PROSECUTION CASE

3. The prosecution case, as it emerges from the material on record, is as follows:



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- a. On the basis of secret information received on 23.04.2024, two persons, being the applicant herein and a Child in Conflict with Law [“CCL”], were apprehended at 10:05 AM upon their arrival in Delhi. They were travelling on West Bengal Sampark Kranti Express [Train No. 12329], from Gaya, Bihar to Anand Vihar, Delhi.
- b. The applicant was in possession of a maroon-coloured backpack. Upon searching the bag, a pink-and-white coloured bag containing four transparent polythene packets were recovered, each containing a blackish-brown substance. Upon opening and testing each packet individually, the contents tested positive for opium. Each packet weighed 506 grams, totalling 2.024 kilograms of opium.
- c. During the preliminary investigation, the applicant and the CCL disclosed the involvement of two more individuals, namely, Dhiraj Kumar and Parmesh Saw, who were stated to be scheduled to arrive at New Delhi Railway Station at 2:00 PM, carrying opium.
- d. Pursuant thereto, the said persons were apprehended, and Parmesh Saw was found carrying a black-coloured bag. Upon inquiry, he revealed that the bag contained opium. Four packets were recovered from the black bag containing black colour pasty substance, which, upon testing, gave positive results for opium. Two of the packets weighed 506 grams each, while the remaining two weighed 508 grams each, totalling 2.028 kilograms of opium.
- e. The applicant’s statement under Section 67 of the NDPS Act was recorded, wherein he voluntarily deposed that, on 22.04.2024, his relative, Biru Saw, had contacted him to transport opium to Delhi



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for a remuneration of Rs. 8,000/-. The applicant further stated that he had been informed that the CCL would accompany him to Delhi, and that further details would be provided upon their arrival. Upon reaching Gaya Junction Railway Station, the applicant and the CCL met Dhiraj Kumar and Parmesh Saw, who disclosed that they were also carrying opium. The applicant disclosed the contact numbers of the said individuals and admitted to having delivered opium on 18-19 prior occasions, including to Alwar, Jaipur, Delhi, Panipat, and Haryana. He further stated that deliveries in Panipat were made to one Pramod, while the deliveries in Rajasthan were made to one Satish @ Kashiram.

- f. The accused persons, being the applicant, CCL, Dhiraj Kumar and Parmesh Saw, were all arrested on 24.04.2024.
 - g. Upon completion of the investigation, a complaint was filed before the Special Court, citing 15 witnesses.
 - h. The accused persons were working for one Biru Saw, and had travelled to Delhi for the purpose of delivering opium. The total recovery constitutes a commercial quantity [2.5 kilograms and above], as the recoveries of 2.024 kilograms and 2.028 kilograms have been reflected in the same complaint and clubbed together.
4. The Nominal Roll reflects that, as of 21.02.2026, the applicant had been in judicial custody for a period of 1 year, 9 months, and 28 days. He has thus now been in custody for a period of over 2 years and 1 month.
5. The applicant's latest bail application¹ was dismissed by the

¹ The applicant's earlier bail application was dismissed on merits by the Special Court *vide* order dated 20.01.2025. Thereafter, the applicant approached this Court by way of BAIL APPLN. 884/2025;



Special Court *vide* order dated 15.01.2026. The Special Court, *inter alia*, noted that there was no material change in circumstances warranting consideration of a successive bail application, and that charges had been framed against the applicant under Sections 18(b) and 29 of the NDPS Act, thereby attracting the rigours of Section 37. The Court further observed that it was not a Constitutional Court, so as to grant relief to the applicant on the ground of violation of Article 21 of the Constitution due to delay, if any, in the trial.

B. SUBMISSIONS BY LEARNED COUNSEL FOR THE PARTIES

6. In support of the present application, Mr. Kumar submitted that, although charges have been framed under Section 18(b) of the NDPS Act, the recovery from the applicant herein was that of an intermediate quantity of opium [2.024 kilograms]. He contended that the further recovery of 2.028 kilograms from co-accused Dhiraj Kumar and Parmesh Saw, who were travelling on another train, ought not to be clubbed. Mr. Kumar also submitted that, despite the seizure having been effected from a railway station, no CCTV footage was obtained, nor was the seizure documented by way of photography or videography. Lastly, he submitted that the applicant has been in custody for over 2 years, and that the trial is likely to take considerable time, with only 2 out of 15 prosecution witnesses having been examined.

7. Mr. Khatri, on the other hand, argued that the applicant and the three co-accused persons are relatives, who were acting in concert, on the instructions of Biru Saw, to supply drugs to several parts of the country. He further submitted that the recovery from co-accused Dhiraj Kumar

however, the said application was withdrawn with liberty *vide* order dated 10.10.2025.



and Parmesh Saw was pursuant to the disclosure statement of the applicant, and hence, the recoveries have rightly been clubbed, making the rigours of Section 37 of the NDPS Act applicable to the present case. With regard to the photography/videography of the seizure, Mr. Khatri submitted that this is a matter for trial.

C. ANALYSIS

8. In the present case, charges have been framed against the applicant under Sections 18(b) and 29 of the NDPS Act. On this basis, the rigours of Section 37 of the NDPS Act are *prima facie* attracted. However, even in such a case, the Court is required to consider the period of custody of the applicant, which is now over 2 years and 1 month, and the likelihood of a prolonged trial. The prosecution has cited 15 witnesses, of which only 2 have been examined thus far. This factual situation requires consideration of the applicant's request for bail in light of the constitutional guarantee of a speedy trial under Article 21.

9. Even in cases to which Section 37 of the NDPS Act is applicable, the Supreme Court has consistently held that these constitutional principles also require consideration in applications for bail by undertrials, who have been in custody for long periods, without likelihood of expeditious conclusion of the proceedings. Reference in this connection may be made to judgments/orders *inter alia* in *Jitendra Jain v. Narcotics Control Bureau and Anr.*², *Dheeraj Kumar Shukla v. State of Uttar Pradesh*³, *Mohd. Muslim v. State (NCT of Delhi)*⁴, *Rabi Prakash v.*

² 2022 SCC OnLine SC 2021.

³ 2023 SCC OnLine SC 918, paragraph 3.

⁴ (2023) 18 SCC 166 [hereinafter, "*Mohd. Muslim*"].



*State of Odisha*⁵. In *Mohd. Muslim*, the Court relied *inter alia* upon *Union of India v. K.A. Najeeb*⁶ and *Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India and Ors.*⁷, the latter judgment having been rendered in the context of the NDPS Act. It was held that, even where statutory restrictions on the grant of bail are applicable, the Court is required to assess the merits on a *prima facie* basis, rather than to come to a finding of the likelihood of guilt beyond reasonable doubt.

10. In *Rabi Prakash* also, the Court reiterated the aforesaid principles in the following terms:

“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.”⁸

11. Reference may also be made to the recent decision in *State of Punjab v. Sukhwinder Singh @ Gora*⁹, in which the Supreme Court has mandated a holistic consideration of the relevant factors under Article 21 of the Constitution, as well as Section 37 of the NDPS Act, as both provisions “*are to be read harmoniously*”¹⁰.

⁵ 2023 SCC OnLine SC 1109, paragraph 4 [hereinafter, “*Rabi Prakash*”].

⁶ (2021) 3 SCC 713.

⁷ (1994) 6 SCC 731.

⁸ Emphasis supplied.

⁹ 2026 SCC OnLine SC 671.

¹⁰ Paragraph 10.



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12. Applying these principles to the facts of the present case, the arguments of learned counsel on both sides on merits, must be viewed from the perspective that the applicant has already undergone custody for a period of over 2 years, with 13 witnesses yet to be examined at trial.

13. It is in this perspective that Mr. Kumar's argument, with regard to clubbing of the quantities of contraband recovered from the applicant and co-accused, becomes relevant. The recovery from the applicant and the CCL, who were travelling together, was of a quantity of 2.024 kg of opium which, by itself, would constitute an intermediate quantity, rendering Section 37 of the NDPS Act inapplicable. The prosecution reliance upon Section 37 of the NDPS Act is thus predicated upon clubbing of the quantities recovered from the applicant and the CCL, who was travelling with him, with the quantities recovered from co-accused Dheeraj Kumar and Parmesh Saw. Mr. Khatri submitted that charges have already been framed by the Special Court on 02.04.2025, under Sections 18(b) and 29 of the NDPS Act, which *inter alia* concerns possession of opium of a commercial quantity. The order framing charges having been accepted by the applicant without challenge, Mr. Khatri submitted that this contention is not open to the applicant at this stage.

14. Mr. Kumar countered this argument with reference to an *ex-facie* inconsistency between the order on charge dated 01.03.2025, and the material placed on record. While the order on charge proceeds on the basis that the quantities recovered from all the co-accused may be clubbed, as they were all travelling together on the same train, Mr. Kumar submitted that this is contrary to the record which shows that the applicant and the CCL arrived at Anand Vihar Railway Station, New



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Delhi, at 10:05 AM on 24.04.2024, by West Bengal Sampark Kranti Express, whereas co-accused Dheeraj Kumar and Parmesh Saw arrived at New Delhi Railway Station, at around 2:00 PM, on the same day by a different train.

15. Although learned counsel on both sides relied upon judgments of this Court and other Courts, with regard to clubbing of quantities recovered from co-accused persons, in support of their respective contention¹¹, I do not intend to address the argument in detail, as the question of whether the applicant can be held guilty of the offence under Section 18(b) of the NDPS Act will ultimately be a matter for trial. Suffice it to state, the applicant's argument casts sufficient *prima facie* doubt to meet the rigours of Section 37 of the NDPS Act at this stage. As noted above, while considering an application for bail, particularly in a case of relatively long incarceration, *Mohd. Muslim* requires the adoption of a *prima facie* standard under Section 37, rather than a strict scrutiny of the merits.

16. Having regard to the period of custody already undergone by the applicant, the stage of trial and the balance between the application of Section 37 of the NDPS Act and the constitutional guarantee of life and liberty under Article 21, I do not consider it appropriate, in the facts and circumstances of the case, to deprive the applicant of his liberty further, pending conclusion of the trial.

¹¹*Awadhesh Yadav v. State (Govt. of NCT of Delhi)*, 2023 SCC OnLine Del 7732; *Prity Kumari and Anr. v. The State of Assam*, BAIL APPLN. 617/2024, decided on 20.04.2024 [Gauhati High Court]; *Chhalimuddin v. State (NCT of Delhi)*, 2025 SCC OnLine Del 2031; and *State v. Akash*, 2025 SCC OnLine Del 8715.



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D. CONCLUSION

17. For the aforesaid reasons, it is directed that the applicant be released on bail in connection with NCB Crime No. VIII/09/DZU/2024, registered under Sections 8(c)/18(b)/29 of the NDPS Act, subject to furnishing a bail bond in the sum of Rs. 50,000/-, with one surety of the like amount, to the satisfaction of the concerned Trial Court/Duty Magistrate, and further subject to the following conditions:

- a. The applicant shall appear before the Special Court on each and every date of hearing.
- b. If the applicant has a passport, he shall surrender the same to the concerned Special Court, and shall not leave the country without the prior permission of the concerned Special Court.
- c. The applicant shall provide his permanent address to the Special Court, as also the address where he is residing during the pendency of the case. The applicant shall intimate the concerned Investigating Officer [“IO”]/Station House Officer [“SHO”], and file an affidavit before the Special Court, regarding any change in his residential address.
- d. The applicant shall furnish his mobile number to the concerned IO/SHO, and shall ensure that the said mobile number remains operational and switched on at all times. The mobile number shall not be changed, nor shall the phone be switched off, without prior intimation to the IO/SHO.
- e. The applicant shall not, directly or indirectly, contact, visit, nor offer any inducement, threat, or promise to any of the prosecution witnesses or other persons acquainted with the facts of the case.



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- f. The applicant shall not, directly or indirectly, tamper with evidence nor otherwise indulge in any act or omission that would prejudice the proceedings in the pending trial.
 - g. The applicant shall not commit any offence during the pendency of the proceedings.
18. The application stands disposed of in the above terms.
 19. It is clarified that the observations made herein are solely for the purpose of adjudication of the present bail application, and shall not be construed as an expression of opinion on the merits of the case, nor shall they prejudice the rights and contentions of the parties at any stage of the proceedings.
 20. A copy of this judgment be sent to the concerned Jail Superintendent for information and necessary compliance.

PRATEEK JALAN, J

MAY 30, 2026
SS/KA/