



2025:DHC:4509



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on:28.05.2025

+ **BAIL APPLN. 446/2025 & CRL.M.A. 3188/2025**

**ARSHADUDDIN AHMAD @
ARSHAD AHMAD**

.....Applicant

versus

**NARCOTICS CONTROL
BUREAU**

.....Respondent

Advocates who appeared in this case:

For the Applicant : Mr. Aditya Aggarwal, Mr. Naveen Panwar,
Ms. Kajol Garg, Mr. Manas Agarwal & Mr.
Vineet Chawla, Advs.

For the Respondent : Mr. Arun Khatri, SSC for NCB with Ms.
Shelly Dixit & Mr. Pankaj Nagar, Advs.

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

JUDGMENT

1. The present bail application is filed seeking regular bail in Case No. VIII/50/DZU/23, registered for offences under Sections 8(c), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act').
2. Briefly stated, on the basis of secret information received on 25.10.2023, officers of the Narcotics Control Bureau (NCB), Delhi



Zonal Unit, intercepted a parcel lying at the DTDC Express Ltd. office, Samalkha, Delhi. The said parcel, bearing AWB No. V88859066, was addressed to one 'Saqlain' at Apollo Clinic, Guwahati, Assam, and was suspected to contain narcotic substances.

3. Upon search, the parcel was found to contain 50.95 grams of MDMA (Ecstasy), a commercial quantity, concealed within a blue jacket. The parcel bore the name and address of the sender as 'Rohit, Janakpuri, West Delhi', along with a mobile number.

4. During the course of inquiry, NCB traced the origin of the parcel to M/s A.B. Services, a DTDC franchise in Janakpuri, where it was allegedly booked by the applicant/accused. The booking agent, Nitin, in his statement recorded under Section 67 of the NDPS Act, claimed that the applicant had visited the courier office, introduced himself as 'Rohit', and produced an Aadhaar card in that name. He further stated that the applicant paid ₹1,200 in cash for the shipment and provided a contact number—7701931570—for correspondence.

5. The said mobile number was traced and allegedly used to contact the courier agent prior to booking. Based on this information, a team of NCB officials apprehended the applicant on 26.10.2023 near Dolma Aunty Momo's outlet in Lajpat Nagar. The applicant was subsequently arrested on 27.10.2023.

6. Subsequently, it is alleged that data recovered from the applicant's mobile phone contained a photograph of the Aadhaar card used to book the parcel.



7. The learned counsel for the applicant submitted that the applicant has been falsely implicated in the present case and that there was no recovery of any contraband from his person. The entire case against the applicant rested on the disclosure statements of the co-accused and the courier agent, which could not be treated as substantive evidence in law. He submitted that the disclosure statements cannot be used against the applicant in view of the judgment passed by the Hon'ble Apex Court in ***Tofan Singh v. State of Tamil Nadu: (2021) 4 SCC 1***.

8. He submitted that the parcel containing the contraband was not addressed to or from the applicant. The sender's name was mentioned as 'Rohit', and no material directly linked the parcel with the applicant. No tracking receipt, Aadhaar card, or parcel booking slip was recovered from the applicant during search or arrest.

9. He submitted that there is no money trail or incriminating evidence which links the applicant to the present offence and the rigours of Section 37 of the NDPS Act are not attracted against him.

10. Lastly, he submitted that the applicant is suffering from serious and deteriorating medical condition. The applicant had been suffering from hypertension, seizure disorder with post-ictal amnesia, DNS with Concha Bullosa, allergic rhinitis, bronchial asthma, and persistent migraines.

11. He submitted that the applicant was arrested on 27.10.2023 and the charges are yet to be framed in the present case. He submitted that there are fifteen witnesses and the trial is likely to take long.



12. *Per contra*, the learned Senior Standing Counsel for the respondent vehemently opposed the grant of bail to the applicant and submitted that the present case involves recovery of commercial quantity of contraband and therefore the rigours of Section 37 of the NDPS Act are attracted against the applicant.

13. He submitted that the applicant is actively involved in the commission of the offence and there is no evidence on record to show that there are reasonable grounds for believing that the applicant is not guilty of the alleged offence.

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. At the same time, the 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 fulfil 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. At the outset, it is noted that the recovery in the present case pertains to a commercial quantity of MDMA (Ecstasy), weighing 50.95 grams, from a courier parcel lying at the DTDC Express Ltd. Samalkha branch. In the present case, it is essentially argued that the applicant has been falsely implicated. It is contended that the applicant's arrest is not supported by any independent recovery and is premised solely on the disclosure statements of co-accused Gaius and the courier booking agent Nitin. It is further argued that there is no direct material linking the applicant to the contraband recovered from the intercepted parcel.

17. It is relevant to note that while the veracity of the disclosure statement of the co-accused is to be tested at the time of the trial, this Court cannot lose sight of the decision of the Hon'ble Apex Court in



Tofan Singh v. State of Tamil Nadu (*supra*), wherein it was held that a disclosure statement made under Section 67 of the NDPS Act is impermissible as evidence without corroboration. The relevant paragraphs of the said judgment are set out below :

“155. Thus, to arrive at the conclusion that a confessional statement made before an officer designated under Section 42 or Section 53 can be the basis to convict a person under the NDPS Act, without any non obstante clause doing away with Section 25 of the Evidence Act, and without any safeguards, would be a direct infringement of the constitutional guarantees contained in Articles 14, 20(3) and 21 of the Constitution of India.

156. The judgment in Kanhaiyalal then goes on to follow Raj Kumar Karwal in paras 44 and 45. For the reasons stated by us hereinabove, both these judgments do not state the law correctly, and are thus overruled by us. Other judgments that expressly refer to and rely upon these judgments, or upon the principles laid down by these judgments, also stand overruled for the reasons given by us.

157. On the other hand, for the reasons given by us in this judgment, the judgments in Noor Aga and Nirmal Singh Pehlwan v. Inspector, Customs are correct in law.

158. We answer the reference by stating:

158.1. That the officers who are invested with powers under Section 53 of the NDPS Act are “police officers” within the meaning of Section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of Section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.

158.2. That a statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.”

(emphasis supplied)

18. It is the case of the prosecution that the applicant is the person who booked the parcel containing the contraband. This allegation is primarily based on the statement of Nitin, the booking agent at M/s A.B. Services, who stated that the applicant had visited the courier office, introduced himself as ‘Rohit’, and handed over the parcel for



booking. According to Nitin, the applicant paid ₹1,200 in cash and also provided an Aadhaar card in the name of 'Rohit' for the purpose of booking. It is further alleged by the prosecution that a photograph of the said Aadhaar card was found in the mobile phone purportedly used by the applicant. However, the applicant has categorically disputed the recovery of any such mobile phone from his possession.

19. Whether the phone belonged to the applicant, and whether the alleged data was recovered from it, are matters that will be determined during the course of trial. At this stage, in the absence of any independent corroboration of Nitin's version and in light of the applicant's specific denial, a doubt is raised which must enure to the benefit of the applicant for the purposes of bail.

20. The medical condition of the applicant also merits consideration. As per the medical reports on record, the applicant suffers from hypertension, seizure disorder with post-ictal amnesia, deviated nasal septum (DNS) with right concha bullosa, bronchial asthma, and migraine, among other chronic conditions. Jail records indicate repeated complaints and hospital visits. Although directions were issued earlier by this Court for the applicant to undergo DNE surgery, the procedure has not yet been carried out. In such circumstances, continued detention, in the absence of effective medical intervention, would infringe the applicant's right to health and dignity.

21. In the case of *Salim Valimamad Majothi v. State of Gujarat* : **2023 SCC OnLine SC 659**, the Hon'ble Apex Court granted bail to



an accused involved in a case under the NDPS Act by considering his medical condition as well as the fact that he had been in incarceration for more than 1 year and 7 months.

22. It is also relevant that the applicant has no prior criminal antecedents and is not shown to be involved in any other NDPS case. The investigation stands concluded, the charge-sheet has been filed, and no further custodial interrogation is warranted. There is no material to suggest that the applicant would abscond or tamper with evidence if released on bail.

23. It also cannot be ignored that the present case is one where the applicant was arrested on 27.10.2023, and despite the passage of considerable time, charges have not been framed as on the date the matter was reserved for judgment. The prosecution has listed fifteen witnesses, and it is evident that the trial is likely to be protracted. In such circumstances, continued incarceration of the applicant would amount to pre-trial detention. The right to a speedy trial, guaranteed under Article 21 of the Constitution, cannot be rendered illusory by indefinite detention during a pending trial with no foreseeable conclusion.

24. It is trite law 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 appellant deserves 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. State²¹ 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)



25. The Hon'ble Apex Court in the case of ***Man Mandal & Anr. v. The State of West Bengal : SLP(CRL.) No. 8656/2023*** had granted bail to the petitioner therein, in an FIR for offences under the NDPS Act, on the ground that the accused had been incarcerated for a period of almost two years and the trial was likely going to take considerable amount of time.

26. 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)

27. The respondent has been given an opportunity to be heard. It is not denied that the primary evidence against the applicant is the disclosure statements of co-accused persons. Whether the applicant is involved in the commission of the offences will only be tested after evidence has been led by the parties. However, at this stage when charges are yet to be framed despite lapse of around two years, this Court does not deem it appropriate to make any comments on this aspect.



28. From the foregoing, despite the stringent requirements imposed on the accused under Section 37 of the NDPS Act for the grant of bail, this Court finds no impediment in granting bail on the ground of undue delay in the completion of the trial and the medical condition of the applicant.

29. Various courts have recognized that prolonged incarceration undermines the right to life, liberty, guarantee under Article 21 of the Constitution of India, and therefore, conditional liberty must take precedence over the statutory restrictions under Section 37 of the NDPS Act.

30. The applicant is stated to be of clean antecedents. This Court is thus satisfied that the applicant, if released on bail, will not indulge in similar offence.

31. In view of the aforesaid discussion, this Court is of the opinion that the applicant has made out a *prima facie* case for grant of bail.

32. The applicant is, therefore, directed to be released on bail on furnishing a personal bond for a sum of ₹50,000/- 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 boundaries of the country without the permission of



the Trial Court;

- c. The applicant shall appear before the learned Trial Court as and when directed;
- d. The applicant shall, after his release, appear before the concerned IO once in every week;
- e. The applicant shall provide the address where he would be residing after his release to the concerned IO and shall not change the address without informing the concerned IO;
- f. The applicant shall, upon his release, give his mobile number to the concerned IO and shall keep his mobile phone switched on at all times.

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

34. 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.

35. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

MAY 28,2025