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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 1289/2025**
GULSHANPetitioner

Through: Mr. Aditya Aggarwal, Mr. Ankit
Mutreja, Ms. Pooja Roy, Ms. Manvi
Gupta and Ms. Shivani Sharma,
Advocates.

versus

STATE GOVT. OF NCT OF DELHIRespondent
Through: Mr. Ajay Vikram Singh, APP.
SI Naresh Kumar, Anti Narcotics
Cell/ North.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
02.05.2025

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1. The present application filed under Section 483 of the Bharatiya
Nagarik Suraksha Sanhita, 2023¹ (earlier Section 439 of the Code of
Criminal Procedure, 1973²) seeks regular bail in proceedings arising from
FIR No. 373/2023 under Section 20 of the Narcotic Drugs and Psychotropic
Substances Act, 1985³, registered at P.S. Kashmiri Gate. On conclusion of
investigation, a chargesheet has also been filed against the Applicant under
Sections 20, 29, 61 and 85 of the NDPS Act and charges have been framed
by the Trial Court.

2. Briefly the case of the prosecution is as follows:

¹ "BNSS"

² "Cr.P.C."

³ "NDPS"

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2.1 On 7th June, 2023, information was received by HC Parveen Saini that a woman named Gulshan (the Applicant) is allegedly involved in drug trafficking activities. He was informed that she would delivering the consignment, near the stormwater pump house under Lothian Bridge, Delhi between 12:30 PM to 1:30 PM. This information was recorded in writing and sent up to ACP, Sub-Division Kotwali.

2.2 Acting on the information, a raiding team led by HC Parveen Saini and W/HC Sapna was constituted under the ACP's instructions. A DD entry No. 5 dated 7th June, 2023 was recorded in this regard. Efforts were made to include public witnesses at the spot, but none agreed to join, except one person who also declined to provide personal details. Due to paucity of time, no written notices were issued to them.

2.3 At around 12:50 PM, the Applicant arrived at the spot carrying a plastic sack. Upon identification by the informer, she was apprehended. A notice under Section 50 of the NDPS Act was served, and she declined to be searched before a Magistrate or Gazetted Officer. The ACP was thereafter summoned, and the Applicant was searched in his presence by W/HC Sapna. The sack was found to contain a green leafy substance, confirmed *via* field testing kit to be Ganja. The recovered substance weighed 23.5 Kgs (including sack weight), and was duly sealed and seized. Compliance with Section 55 NDPS Act was also recorded.

2.4 The FIR was subsequently registered, and the Applicant was arrested. During custodial interrogation, she disclosed having procured the Ganja from one Ms. Daya, a resident of Wazirabad, and admitted to retail distribution in Kashmiri Gate. A Section 57 report was filed thereafter.

2.5 Based on the Applicant's disclosure, Ms. Daya was apprehended on

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8th June, 2023, with 5 Kgs of Ganja in her possession. She was arrested and the recovered contraband seized.

2.6 Upon an application filed under Section 52A NDPS Act, samples were drawn and sent to the FSL, which confirmed the substance as Ganja. While the initial seizure weight was recorded as 23.5 Kgs, the FSL examination measured the weight at 22.5 Kgs, noting that the contraband was in damp condition at the time of seizure.

2.7 The chargesheet has since been filed and charges have been framed against the Applicant. Her earlier application for bail was rejected by this Court on 10th January, 2025.

3. Counsel for Applicant submits that notwithstanding the earlier rejection, the present application raises legal grounds which were not advanced during the prior hearing. It is submitted that the Applicant's arrest took place at a public location near a government office, yet no videography of the arrest or seizure was undertaken, nor was any CCTV footage placed on record. No independent witness was joined during the proceedings, despite the raid being executed in a public area.

4. It is further submitted that Courts have, in similar cases, treated the absence of independent witnesses and video evidence as significant for the purpose of bail. It is urged that the Applicant has remained in custody for over 1.5 years, during which there has been no material progress in the trial. The matter remains at the stage of prosecution evidence, with no witnesses examined thus far. It is also pointed out that the recovered quantity is only marginally above the commercial threshold of 20 Kgs under the NDPS Act, thereby invoking the rigours of Section 37.

5. The Court has considered the rival contentions. It is noted that in the

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earlier round, the Applicant had raised only two grounds: non-compliance of Sections 50 and 52A of the NDPS Act. The grounds now urged, specifically, the absence of independent witnesses and lack of videographic documentation, were not previously placed before the Court. These additional grounds merit consideration.

6. The contraband recovered from Applicant is 22.5 Kgs of Ganja which is marginally above the commercial quantity prescribed under the NDPS Act.

7. The prosecution alleges that the Applicant was apprehended in a public location in the vicinity of a government facility. Despite acting on pre-received secret information, the raiding team failed to record the search and seizure. Absence of any independent witnesses at the time of seizure, despite the area being publicly accessible, and the lack of any effort to procure CCTV footage or videographic documentation, does cast a degree of doubt on the prosecution's version. However, it is clarified that such deficiencies, do not *ipso facto* vitiate the recovery or demolish the prosecution's case altogether. These are matters that will ultimately fall for fuller scrutiny during the course of trial, when the prosecution's evidence can be tested on the touchstone of cross-examination and corroboration.

8. On this issue, it must be noted that the BNSS, recording of search and seizure proceedings, that provision is prospective and does not apply to this case. However, Courts have emphasised the need to record video or photo evidence of search and seizure conducted under the NDPS Act. The Supreme Court, in various judgments has held emphasized that video or photography of the seizure proceedings under the NDPS Act are a critical safeguard to ensure transparency and accountability in handling of the

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evidence and in cases where videography or photography has not been undertaken, the prosecution must provide clear and valid justifications for such omissions⁴. The co-ordinate bench of this Court in ***Bantu v. State Government of NCT of Delhi***⁵ delved deep into the jurisprudence surrounding the requirement of videography and photography as well as joining of independent witnesses during search and seizure proceedings under the NDPS Act and made the following observations:

“72. Almost all individuals carry a mobile phone compatible for videography these days. From the above cases, it is clear that it is open for the prosecution to furnish reasons to explain and justify the absence of videography and photography in a case. Mere absence of videography and photography of the recovery does not nullify the case of the prosecution, however, the same can in some circumstances be sufficient to create a doubt as to the veracity of the prosecution's case.

73. The Hon'ble Apex Court, in a catena of judgments has held that the more severe the punishment, greater has to be the care taken to ensure that all the safeguards provided in the statute are scrupulously followed.

74. While a little play in the joint has to be afforded to investigating agencies to enable them to discharge their duties, the authorities also have to be held accountable to prevent abuse of law. In cases where the factum of recovery of the contraband is supported only by official witnesses, lack of videography and photography, especially in the absence of independent witnesses, casts a doubt on the recovery of the contraband, unless the same is justified by cogent reasons.

75. As already noted above, in the case of absence of independent witnesses, it is to be seen whether any prejudice is caused to the accused person and testimonies of the police officials can be believed even without corroboration if the same is found to be credible. This Court is of the opinion that the same rationale would extend to cases where there is no photography and videography as well, specially when the same has been deliberated and commented upon by Courts on numerous occasions.

⁴ Shafi Mohd. v. State of H.P. (2018) 5 SCC 311.

⁵ 2024 SCC OnLine Del 4671

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76. The sufficiency of the explanation, if any, is to be tested during the course of the trial after the prosecution has led its evidence, however, in the opinion of this Court, the absence of any independent evidence to support recovery (presence of public witnesses, videography or photography) is a relevant factor while considering applications for grant of bail as the same casts a shadow over the very fulcrum of the case.

77. The Drug Law Enforcement Field Officers' Handbook (hereafter 'NCB Handbook'), issued by the Narcotic Control Bureau (NCB), Ministry of Home Affairs, Government of India also provides that before the operation, the search team should be provided with the necessary equipment, including, a video camera. The NCB Handbook explicitly also provides that the recovery and concealment should be videographed simultaneously if possible, recording the presence of the owner of premises and witnesses, to avoid the witnesses and suspects alleging foul play during the trial."

9. The Applicant has no prior criminal antecedents. During the pendency of the present case, she has been granted interim bail on multiple occasions and has scrupulously adhered to all conditions, including timely surrender. As such, the Court is satisfied that the conditions of Section 37(1)(b) of the NDPS Act is met.

10. As per the nominal roll dated 29th April, 2025, the Applicant has undergone 1 year, 5 months, and 22 days in custody. Her jail conduct is noted to be satisfactory. There has been a substantial delay in trial. Till now, even though the trial is at the stage of prosecution evidence, no witnesses have been examined. There is also nothing on record to indicate that the delay is attributable to the Applicant. In this regard, it must be noted that a co-ordinate bench of this Court in ***Lali v. State of NCT of Delhi***⁶, while relying upon the judgments of the Supreme Court in ***Dheeraj Kumar Shukla v State of U.P.***⁷ and ***Mohd. Muslim alias Hussain v. State (NCT of***

⁶ Bail Appln. 2507/2024, decided on 20th February, 2025.

⁷ 2023 SCC OnLine SC 918

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Delhi)⁸, has observed that the grant of bail on the grounds of undue delay in trial cannot be said to be fettered by Section 37 of the NDPS Act.

11. Thus, having regard to the aforementioned circumstances and in light of additional ground urged by the Applicant as well as the change in circumstances, the Court is inclined to enlarge the Applicant on bail.

12. The Applicant is, therefore, directed to be released on bail on furnishing a personal bond for a sum of ₹25,000/- with one surety of the like amount, subject to the satisfaction of the Trial Court/Duty Metropolitan Magistrate/ Jail Superintendent, on the following conditions:

- a. The Applicant shall cooperate in any further investigation as and when directed by the concerned IO;
- b. 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;
- c. The Applicant shall under no circumstance leave the country without the permission of the Trial Court;
- d. The Applicant shall appear before the Trial Court as and when directed;
- e. The Applicant shall provide the address where she would be residing after her release and shall not change the address without informing the concerned IO/ SHO;
- f. The Applicant shall, upon her release, give her mobile number to the concerned IO/SO and shall keep his mobile phone switched on at all times.

⁸ 2023 SCC OnLine SC 352

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

14. 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 should also not be taken as an expression of opinion on the merits of the case.

15. The bail application is allowed and disposed of in the afore-mentioned terms.

SANJEEV NARULA, J

MAY 2, 2025

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