Bail Matters 3268/2025
STATE Vs. RAM HARI RAI
FIR No. 142/2025
PS- (Amar Colony)
u/s 20/29 of NDPS Act

22.01.2026

This is an application under Section 483 of Bhartiya Nagrik Suraksha Sanhita, 2023, filed on behalf of the applicant/accused Ram Hari Rai for grant of regular bail.

Present : Sh. S.K. Kain, Ld. Addl. PP for the State.
Sh. Aditya Aggarwal and Ms. Manvi Gupta, Ld. Counsel for the applicant/accused.
Inspector Vishnu on behalf of DCP concerned is present.

1. Vide this order, this Court shall adjudicate upon the regular bail application filed on behalf of the applicant/accused Ram Hari Rai. Arguments were heard at length, the gist whereof is discussed hereunder.

2. Ld. Counsel for applicant/accused submitted that the applicant/accused has been languishing in JC since 24.02.2025. Ld. Counsel further submitted that the applicant/accused has been falsely implicated in the present matter as he has nothing to do with the alleged offences. Ld. Counsel further submitted that there is a violation of Article 22(1) of the Constitution of India as the law is very well settled by the Hon'ble Apex Court as well as Hon'ble High Court that the accused has to be informed about his grounds of arrest in writing, however, the grounds of arrest had not been communicated to the accused in writing for the offences

which he was arrested. Ld. Counsel further submitted that the grounds mentioned in the remand application of the applicant/accused filed by the investigating officer in the present case are not the ‘grounds of arrest’ and are rather ‘reasons of arrest’ and that there is a significant difference in the phrase ‘reasons for arrest’ and not ‘grounds of arrest’. He further submitted that the ‘grounds of arrest’ would invariably be personal to the accused and cannot be equated with the ‘reasons of arrest’ which are general in nature. Ld. Counsel further submitted that no independent public witness joined the investigation at the time of alleged recovery/arrest in the present matter. Ld. Counsel further submitted that as per the prosecution case, the seizure proceedings while apprehending the applicant/accused along with the alleged recovery was duly videographed by the police officials and uploaded on the E-Sakshay application, however, the said video has not been filed by the prosecution along with the chargehseet and it can be accessed by the concerned IO only and that the applicant/accused can never access the same, therefore, the prosecution failed to complete its chain of evidence. Ld. Counsel further submitted that the applicant/accused was arrested merely on the disclosure statement of co-accused and the same is inadmissible in law. Ld. Counsel further submitted that the applicant/accused has clean past antecedents and has never been involved in any criminal activity. Ld. Counsel thus, submitted that the applicant/accused ought to be granted bail and he is ready to abide by all the terms and conditions imposed upon him while granting the bail. In

support of his submissions, Ld. Counsel placed reliance on the following judgments:

i). Pahalman Budha Magar vs. State NCT of Delhi Bail Application No. 4034/2025 decided on 21.01.2026;

ii). Sanjay vs. State Govt. Of NCT of Delhi Bail Application No. 3710/2023 decided on 22.01.2025;

iii). Nripendra Kumar vs. State Crl. M. C. No. 5208/2025 decided on 04.08.2025;

iv). D. K. Basu vs. State of West Bengal 1997 AIR SC 610;

v). Mihir Rajesh Shah vs. State of Maharashtra and Anr. SLP (Crl.) No. 8704 of 2025;

vi). Vihaan Kumar vs. State of Haryana 2025 SCC OnLine SC 269;

vii). Pankaj Bansal vs. Union of India and Ors. MANU/SC 1076/2023; and

viii) Prabir Purkayastha vs. State (NCT of Delhi) SLP (Crl.) No. 42896 of 2023 decided on 15.05.2024.

3. *Per contra* Ld. Addl. PP for the State along with IO vehemently opposed the bail application citing the gravity of the offence as one of the main grounds. Ld. Addl. PP submitted that applicant/accused is a part of drug nexus which sell narcotics drugs and that the drug menace is affecting the entire society and especially it is targeting the younger generation and it affects the economy of the country and that illicit money is being used for drug trafficking which is a serious offence and the persons

involved in the illicit drug trafficking are destroying the social fabric of society and leading youth to wrongful path. Ld. Addl. PP further submitted that the present applicant/accused received 'charas' from co-accused Rajesh (since absconding) from Nepal border and supplied to co-accused persons and that in the present matter, commercial quantity of the contraband i.e. 3.965 kg of 'charas' has been recovered from the possession of the accused persons and therefore, the bar of Section 37 of NDPS Act would be applicable in the present matter. Ld. Addl. PP further submitted that the present applicant/accused is a Nepalese national and he does not have any permanent address in India, and therefore, if he is granted bail, there is strong possibility that he may jump the bail and abscond to evade the trial. Ld. Addl. PP thus, submitted that the applicant/accused ought not to be granted bail.

4. I have heard the arguments addressed by the opposite parties and perused the record.

5. 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, the danger of the accused absconding or fleeing if released on bail; reasonable apprehension of the witnesses being threatened; etc. However, at

the same time, period of incarceration is also a relevant factor that is to be considered.

6. So far as the contention that the applicant/accused cannot be enlarged on bail unless the conditions laid down in Section 37 of NDPS Act are met. In this regard, it would be apposite to reproduce the relevant extracts/portion of **Union of India vs. Shiv Shanker Kesari: (2007) 7 SCC 798** of the Hon'ble Apex Court, wherein, it was observed as under:

> "11. The court while considering the application for bail with reference to Section 37 of the Act 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 that the court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty.
> 12. Additionally, the court has to record a finding that while on bail the accused is not likely to commit any offence and there should also exist some materials to come to such a conclusion."

7. Also, in case of **Mohd. Muslim v. State (NCT of Delhi) :2023 SCC OnLine SC 352**, the Hon'ble Apex Court has reiterated the law in regard to Section 37 of the NDPS Act as under:

> "20. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and

> unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act."

8. Amongst all the grounds for bail raised by the applicant, the primary issue rests qua the non-supply of the grounds of arrest. Recently, the Hon'ble Supreme Court in the case of **Mihir Rajesh Shah (supra)**, after analyzing **Pankaj Bansal (supra), Prabir Purkayastha (supra) and Vihaan Kumar (supra)**, which also deals with special statutes, has established a clear position of law qua the aforesaid issue by holding that Article 22(1) of the Constitution is a substantive constitutional safeguard, not a procedural formality as its purpose is to enable the arrested person to effectively defend himself by securing legal assistance, opposing remand, and exercising available rights. The grounds of arrest must be communicated clearly, with sufficient factual detail, in a language understood by the arrestee for serving the purpose of Article 22(1) of the Constitution and merely reading out the grounds of arrest is inadequate, since an arrested person may not be in a mental state to comprehend or retain what is orally conveyed. The relevant directions in the case of **Mihir Rajesh Shah (supra)** are reproduced herein as under:-

> "56.In conclusion, it is held that:
>
> i) The constitutional mandate of informing the arrestee the grounds of arrest is mandatory in all offences under all statutes including offences under Penal Code, 1860 (now BNS 2023);
>
> ii) The grounds of arrest must be communicated in writing to the arrestee in the language he/she understands;
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> iii) In case(s) where, the arresting officer/person is unable to communicate the grounds of arrest in writing on or soon after arrest, it be so done orally. The said grounds be communicated in writing within a reasonable time and in any case at least two hours prior to production of the arrestee for remand proceedings before the magistrate.
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> iv) In case of non-compliance of the above, the arrest and subsequent remand would be rendered illegal and the person will be at liberty to be set free."

9. Further, during the course of arguments, it was brought to the fore that the total recovered quantity in this case from all accused persons is 3.965 kg of 'charas'. However, admittedly, no recovery was made from the present applicant/accused. It was also brought to the notice of this court that in the present matter, investigation has already been completed and the chargesheet has also been filed before this court.

10. Further, in the case of **Tanay Khatri vs. State of NCT of Delhi Bail Application No. 2517 of 2024** decided on 10.09.2024, the Hon'ble High Court observed as under:

> "11.At this stage, there is no other evidence to show that the applicant is involved in any

> manner with the accused Sahil. Admittedly no recovery has been affected from the applicant and in such circumstances because the applicant was in touch with the co-accused the bar of Section 37 NDPS Act is not attracted. The Courts are not expected to accept every allegation made by the prosecution as a gospel truth."

11. It is also apposite to reproduce the relevant extract/para of the case of **Phundreimayum Yas Khan vs. State (NCT of Delhi): 2023 SCC OnLine Del 135,** where the Hon'ble High Court observed as under:

> "Prosecution case was solely based on disclosure statement of co-accused which is per se not admissible without any corroboration. Case of prosecution that statement of accused lead to the discovery of other co-accused, i.e. alleged main supplier of contraband. No new fact was disclosed by accused regarding co-accused. Co-accused was neither found, nor arrested. Disclosure statement made under Section 67 of NDPS Act by accused cannot be read against him. Contraband of commercial quantity was not recovered from possession of accused. No monetary transactions, bank statement or finances that shows the sale/purchase of prohibited narcotic substance between accused and co-accused. Mere existence of calls between accused and co-accused cannot be a ground to deny bail. Rigors of Section 37 of NDPS Act would not be applicable."

12. It would also be pertinent to peruse the relevant extracts of the recent case of **Pahalman Budha Magar (supra)**, the same is as under:

> "16. The law qua the non-supply of the grounds of arrest, in light of Pankaj Bansal

(supra) and Prabir Purkayastha (supra), is that if the grounds/reasons for arresting is not provided in writing to the arrestee, the arrest therefore, ipso facto gets vitiated on account of directly violating Article 22(1) of the Constitution. The aforesaid legal position, as existing on the date of arrest, i.e., 20.10.2023, was subsequently reaffirmed, and further fortified by the Hon'ble Supreme Court in Mihir Rajesh Shah (supra).

17. **********

18. **********

19. No doubt, while granting bail in a case under Section 37 of the NDPS Act, this Court must take due note of the twin conditions elucidated hereinabove, however, the same must be balanced with the fundamental guarantee of an accused being provided the grounds of arrest as per Article 22(1) of the Constitution. Section 37of the NDPS Act, and/or the other factors for granting bail to an accused, in such a scenario, cannot eclipse/override Article 22 (1)of the Constitution. A balance has, thus, to be drawn. Also, in light of the directions passed by the Hon'ble Supreme Court in Mihir Rajesh Shah (supra) which affirms the view rendered in Pankaj Bansal (supra) and Prabir Purkayastha (supra), the grant of bail in cases involving commercial quantity on the basis of non-supply of grounds of arrest is not barred by Section 37 of the NDPS Act and once it is admitted that no grounds of arrest were given at the time of the arrest to an accused, the said arrest and the subsequent remand becomes vitiated.

20. Under such circumstances, since there were no grounds of arrest mentioned and/or supplied to the applicant takes precedence over the other factors like gravity of the offence, the quantum of recovery, there being no videography/photography and/ or there being no independent witnesses. The same need not be gone into by this Court at this stage."

14. In the instant case, it has been fairly conceded by Ld. Addl. PP for the State that the grounds of arrest had not been communicated to the accused in writing for the offences which he was arrested. No previous involvement of the applicant/accused has been reported by the IO in any other criminal case except the instant one. Besides that, the trial of the case will take long time.

15. Considering the aforementioned circumstances and taking into account the submissions, I deem it fit to grant bail to accused Ram Hari Rai, on his furnishing personal bond with surety bond of Rs. 50,000/- with one surety in the like amount each, subject to following conditions:

i) Applicant being a foreign national shall surrender his Passport to the IO upon his release. If he does not possess the same, he shall file an affidavit before the IO to tht effect within the stipulated time.

ii). The applicant/accused shall not leave the country without the prior permission of the court;

iii). The applicant shall provide his permanent address to the court. The applicant shall intimate the court by way of an affidavit and to the IO regarding any change in the residential address;

iv) The applicant shall appear before the court as and when the matter is taken up for hearing;

v) The applicant shall also furnish his mobile numbers and mobile numbers of his surety to the IO concerned, which shall be

kept in a working condition at all times and shall not be switched off or changed without prior intimation to the IO concerned.

vi) The applicant shall not communicate with or come in contact with any of the prosecution witnesses or tamper with the evidence of the case while being released on bail.

16. Needless to say, the above-mentioned observations are predicated solely on the facts as alleged, and brought forth at this juncture, and are not findings on merits, and would also have no bearing on the merits of the case. With these conditions, and observations, the regular bail application stands disposed of.

17. In compliance of **Sanjay Singh Vs. State (Govt of N.C.T of Delhi) Writ Petition Criminal 974/2022,** copy of this order be sent to concerned Jail Superintendent to convey the order to inmate.

18. Copy of this order be given dasti.

(Dr. TARUN SAHRAWAT)
ASJ-04 + Spl. Judge (NDPS),
South East District, Saket Court,
New Delhi /22.01.2026