Bail Matters 2712/2025
STATE Vs. SUNIL LAMA
FIR No. 142/2025
PS- (Amar Colony)
u/s 20/29 of NDPS Act

30.01.2026

This is an application under Section 483 of Bhartiya Nagrik Suraksha Sanhita, 2023, filed on behalf of the applicant/accused Sunil Lama 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.

1. Vide this order, this Court shall adjudicate upon the regular bail application filed on behalf of the applicant/accused Sunil Lama. 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 23.02.2025. 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 chargesheet 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 there is a violation of Section 36 of BNSS in the present matter inasmuch as while arresting the applicant/accused, police officials had neither informed any family members of the applicant/accused nor got his arrest memo attested by respectable member of the society. He also submitted that on the arrest memo of applicant/accused, a name of his friend has been mentioned, but not even a name of his family member is there and the same was also not informed by the prosecution. 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 allegations against the applicant/accused are very grave and serious in nature as the case involves seizure of commercial quantity of NDPS drugs i.e. total 3.965 kg of 'charas'. Ld. Addl. PP further submitted that the applicant/accsed played a key role in storing and supplying contraband on behalf of main accused Ram Hari Rai and that the recovery of 2.516 kg of 'charas' (commercial quantity) has been effected from the conscious possession of the applicant/accused. 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.
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> 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:
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> 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);
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> 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, itbe 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, in the said case of **Mihir Rajesh Shah (supra)**, the Hon'ble Supreme Court observed as under:

> "34. The objective enshrined in Article 22(1) of the Constitution of India for furnishing grounds of arrest stems from the fundamental principle of providing opportunity to a person to allow him to defend himself from the accusations that are levelled against him leading to his arrest. The salutary purpose of informing the grounds of arrest is to enable the person to understand the basis of his arrest and engage legal counsel to challenge his arrest, remand or seek bail and/or avail of any other remedy as may be available to him/her under law."

10. It would also be pertinent to peruse the relevant extracts of the above-cited 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 isnot 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 mustbe balanced with the fundamental guarantee of an accused being provided the grounds of arrestas 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 viewrendered 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."

11. 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 about the offences for which he was arrested. Further, the investigation in the present matter has been completed and chargesheet has also been filed. Further, the co-accused persons namely Sajit Thulung and Ram Hari Rai have already been granted bail by this court vide orders dated 22.01.2026. No previous involvement of the applicant/accused has been reported by the IO in any other criminal case except the instant one.

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

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

ii). 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;

iii) The accused shall report to the concerned Police Station once in a week, that is, on every Friday at 10:30 AM and

the Police shall release him after recording his presence andcompletion of all the necessary formalities.

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.

13. 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.

14. 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.

15. Copy of this order be given dasti.

(Dr. TARUN SAHRAWAT)
ASJ-04 + Spl. Judge (NDPS),
South East District, Saket Court,
New Delhi /30.01.2026