

(2025) 07 DEL CK 0965

In the Delhi High Court

Case No : Bail Application No. 452 Of 2025

Ravi Prakash @ Vicky

APPELLANT

Vs

State Govt Of Nct Of Delhi

RESPONDENT

Date of Decision : 24-07-2025

Acts Referred:

Bharatiya Nagarik Suraksha Sanhita, 2023 — Section 483
Criminal Procedure Code, 1973 — Section 100(4), 100(8)
Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 21, 29, 36A(3), 37, 52A, 52A(2), 54

Citation : (2025) 07 DEL CK 0965

Hon'ble Judges : Ravinder Dudeja, J

Bench : Single Bench

Advocate : Aditya Aggarwal, Shivani Sharma, Aman Usman

Final Decision : Dismissed

Judgement

Ravinder Dudeja, J

1. This is an application filed on behalf of petitioner/accused Ravi Prakash @ Vicky under Section 483 of Bhartiya Nagarik Suraksha Sanhita, 2023 ["BNSS"] read with Section 36A (3) of the Narcotic Drugs and Psychotropic Substances Act, 1985 ["NDPS Act"] for the grant of regular bail in FIR No. 0104/2023, registered under Sections 21/29 of the NDPS Act at PS Special Cell.
2. Notice of the application was served to the respondent. State through learned Additional PP, filed the status report and has contested the petition.
3. Learned counsel for the petitioner has submitted that the alleged recovery was effected at a place which was 20-30 meters behind the temple and in front of parking towards Shakur Basti Railway Station at 7.40 pm. It is a busy area but no independent public witness was joined at the time of alleged recovery as per Section 100 (4) & 100 (8) of the Code of Criminal Procedure.
4. It has been further submitted that information was received at 5.45 pm and

the raiding team reached at the spot at 6.50 pm, thus, there was enough time available to arrange videography/photography, but neither any videography nor any photography of the investigation at the place of incident was conducted. No effort has been made to procure the CCTV footage.

5. It is further submitted that if the prosecution case is to be believed, petitioner named several customers but no action has been taken against the said customers nor any investigation has been conducted to establish the chain.

6. It is also submitted that there is no evidence of any CDR connectivity between the petitioner and co-accused Tasleema. No location chart of the petitioner has been annexed with the charge sheet, and thus, there is no corroborative evidence to support the alleged recovery.

7. It is also argued that there was a delay in compliance of Section 52-A NDPS Act since the application was filed almost a month after the recovery. It has been submitted that such a procedural lapse breaches the mandatory provisions, and thus, petitioner has crossed the bar under Section 37 NDPS Act, making him eligible for bail.

8. It is further submitted that petitioner has been in custody since 19.04.2023. Trial is not likely to conclude in near future. Petitioner has clean antecedents and he shall abide by all the terms and conditions that may be imposed.

9. Bail application has been opposed by the learned APP, arguing that there is recovery of commercial quantity of heroin from the possession of the present petitioner, and therefore, bar of Section 37 NDPS Act is applicable in the present case. Relying upon the judgment of the Supreme Court in the case of NCB Vs. Kashif, 2024 SCC OnLine 3848, it has been submitted that any lapse or delay in compliance of Section 52-A is a procedural irregularity, and therefore, accused is not entitled for the grant of bail on this ground alone.

10. With regard to the CCTV footage, learned APP states that there is no CCTV camera installed near the place of occurrence, and that is why, there is no CCTV footage available. Relying upon the FIR, he submits that few passers-by were requested to join the investigation, but they had refused and left, expressing their inability.

11. Learned APP further submits that videography/photography at the time of recovery was not a mandatory legal requirement under the Code of Criminal Procedure. Moreover, such facilities were not available to the Investigating Officer. The only way in which the Investigating Officer could have made the videography was through his own mobile phone, and doing so, would have meant that he had to deposit his mobile phone as a primary evidence, which is practically not possible for the Investigating Officers to do.

12. The Court has considered the submissions made by the learned counsel for the petitioner as also the learned APP.

13. As per allegations in the FIR, petitioner and co-accused Tasleema Begum were apprehended on the basis of a secret information, while co-accused Tasleema handed over a black colour polythene from her brown colour trolley bag to the petitioner. On checking the said polythene, it was found containing heroin which on weighing was found to be 1 kg. Upon search of co-accused Tasleema, one more Kg heroin was recovered.

14. The averments in the FIR reveal that the recovery of contraband was based on a secret information, leading to apprehension of the petitioner and co-accused and recovery of heroin from their possession. The allegations clearly indicate that petitioner was in conscious possession of the contraband, having received it from co-accused. Since the recovery from the petitioner is 1kg heroine, rigor of Section 37 of the NDPS Act would be attracted in the present case.

15. As per Standing Order No. 1/88 dated 15.03.1988, the samples should be sent to FSL within 72 hours from the time of seizure. The sample collected under Section 52-A NDPS proceedings were drawn on 11.07.2023 and were deposited in FSL on 18.07.2023. Samples were sent to FSL with the seal of the learned JMFC. It is not the case of the petitioner that the seal was not intact or was tampered with by the time it reached the FSL. Moreover, Supreme Court in the case of Kashif (supra) held that any procedural irregularity or illegality found to have been committed in conducting the search or seizure from the accused during the course of investigation or thereafter would by itself not render the entire evidence collected during investigation as inadmissible, and any lapse or delay in compliance of Section 52-A by itself would neither vitiate the trial nor would it entitle the accused to be released on bail. The relevant paragraph of the judgments reads as under:-

(i) The provisions of NDPS Act are required to be interpreted keeping in mind the scheme, object and purpose of the Act; as also the impact on the society as a whole. It has to be interpreted literally and not liberally, which may ultimately frustrate the object, purpose and Preamble of the Act.

(ii) While considering the application for bail, the Court must bear in mind the provisions of Section 37 of the NDPS Act which are mandatory in nature. Recording of findings as mandated in Section 37 is sine qua non is known for granting bail to the accused involved in the offences under the NDPS Act.

(iii) The purpose of insertion of Section 52A laying down the procedure for disposal of seized Narcotic Drugs and Psychotropic Substances, was to ensure the early disposal of the seized contraband drugs and substances. It was inserted in 1989 as one of the measures to implement and to give effect to the International Conventions on the Narcotic drugs and psychotropic substances.

(iv) Sub-section (2) of Section 52A lays down the procedure as contemplated in sub-section (1) thereof, and any lapse or delayed compliance thereof would be merely a procedural irregularity which would neither entitle the accused to be released on bail nor would vitiate the trial on that ground alone.

(v) Any procedural irregularity or illegality found to have been committed in conducting the search and seizure during the course of investigation or thereafter, would by itself not make the entire evidence collected during the course of investigation, inadmissible.

The Court would have to consider all the circumstances and find out whether any serious prejudice has been caused to the accused.

(vi) Any lapse or delay in compliance of Section 52A by itself would neither vitiate the trial nor would entitle the accused to be released on bail. The Court will have to consider other circumstances and the other primary evidence collected during the course of investigation, as also the statutory presumption permissible under Section 54 of the NDPS Act.”

16. In view of the aforesaid proposition of law, as laid down by the Apex Court, the delay in drawing the samples or in depositing the same in FSL is only a procedural irregularity and cannot be considered at this stage.

17. Similarly, in the case of Khet Singh vs. Union of India [(2002) 4 SCC 380], the Hon’ble Supreme Court after considering number of earlier decisions held that:

“16. Law on the point is very clear that even if there is any sort of procedural illegality in conducting the search and seizure, the evidence collected thereby will not become inadmissible and the court would consider all the circumstances and find out whether any serious prejudice had been caused to the accused. If the search and seizure was in complete defiance of the law and procedure and there was any possibility of the evidence collected likely to have been tampered with or interpolated during the course of such search or seizure, then, it could be said that the evidence is not liable to be admissible in evidence”.

18. Admittedly, the place from where the petitioner was apprehended, and recovery was effected, was a public place, but no independent witness has been joined. The FIR records that 3-4 public persons and 2-3 e-rickshaw drivers were requested to join the raiding team but they refused and left without telling their names and addresses. The FIR further records the name of one Kuldeep, son of Kalu, who was requested to join the raiding team but he also left, expressing his inability on account of some urgent work. The present is thus not a case where no effort was made by the Investigating Officer to join independent public witnesses. The Supreme Court in Surinder Kumar v. State of Punjab, (2020) 2 SCC 563, held that there is a presumption in favour of the police in discharge of their official duties unless contrary evidence is produced. The recovery effected in the presence of police officials cannot be doubted, as is held in various judgments by the Supreme Court, namely, Kallu Khan v. State of Rajasthan, (2021) 19 SCC 197, Jagwinder Singh v. State of Punjab, CrI. Appl. No. 2027/2012 dated 02.11.2023 and Ram Swaroop v. State (Govt. of NCT of Delhi), (2013) 14 SCC 235.

19. Admittedly, there is no videography/photography of the incident. The same was not a mandatory requirement under the Code of Criminal Procedure. In Bail Application No. 4378/2024, Imran Ali @ Sameer Vs. State, dated 05.06.2025, this Court observed that the use of technology certainly enhances the efficacy and transparency of the police investigation and assures fairness, and therefore, ideally, every effort should be made by the investigating agency to use technological means in aid of investigation. However, there may be situations where audio/video recording may not be feasible.

20. It is not unknown that the tools for videography/photography were not available with the Investigating Officers in the year 2023, and therefore, the version of the police cannot be disbelieved merely because there is no videography/photography of the recovery. Regarding CCTV footage, the stand of prosecution has been that there is no CCTV camera near the place of occurrence and hence no CCTV footage.

21. Petitioner has been in custody since 19.04.2023. It cannot be said that he has been behind the bars for a phenomenally long period or that because of inordinate delay in concluding the trial, he should be released on bail.

22. In my view, the narrow parameter of bail available under Section 37 of the NDPS Act has not been satisfied in the facts of the present case. I am therefore not inclined to grant bail to the petitioner.

23. The petition is accordingly dismissed.

24. Nothing stated in this order shall tantamount to an expression on the merits of the case.