

(2025) 12 DEL CK 1723

In the Delhi High Court

Case No : Bail Application No. 3068 Of 2025 & Criminal Miscellaneous
Application No. 23762 Of 2025

Sahil Sharma Alias Maxx

APPELLANT

Vs

State Govt Of Nct Of Delhi

RESPONDENT

Date of Decision : 03-12-2025

Acts Referred:

Constitution of India, 1950 — Article 21
Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 19, 20, 22, 24, 25,
27A, 37, 37(1)(b)(ii)

Citation : (2025) 12 DEL CK 1723

Hon'ble Judges : Amit Mahajan, J

Bench : Single Bench

Advocate : Akshay Bhandari, Megha Saroa, Kushal Kumar, Anmol Sachdeva,
Janak Raj Ambavat, Ritesh Kumar Bahri

Final Decision : Allowed

Judgement

Amit Mahajan, J

1. The present application has been filed by the applicant seeking regular bail in FIR No. 205/2023 dated 22.08.2023, registered at Police Station Crime Branch, for the offences under Sections 20/22/25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act').

2. Briefly stated, it is alleged that on 21.08.2023, on the basis of secret information, the applicant was apprehended when he was travelling in a grey car towards Akhada, near Chaupal street. Allegedly, a recovery of 67g of MDMA (found to be methamphetamine in FSL) was made from a polythene found in the applicant's pocket. It is also alleged that the following recoveries were effected from the applicant's car : 133g of MDMA kept under the driver's seat in a white polythene, 1200g of charas kept in the glove box in a zip lock pouch and 2580g of ganja kept in a black polythene in the boot of the car. Thereafter, at the instance of the applicant, a recovery of 52g of MDMA@ecstasy was made from

the flat of the applicant.

3. It is alleged that at the instance of the applicant, 6 riders who used to deliver contraband were arrested and recoveries were effected from two of the said drivers – Sonu and Chandan. Allegedly, a recovery of 53g of hybrid ganja and 1.87g of MDMA was made from co-accused Sonu and a recovery of 54g of hybrid ganja and 2g of MDMA was made from co-accused Chandan. Co-accused L. Jicko Meitei was also arrested at the instance of the applicant and a recovery of 4 Kg of ganja was made from him.

4. The applicant and co-accused Tanay Khatri (arrested on the applicant's disclosure) disclosed regarding one Anand Singh @ Andy who used to facilitate the supply of contraband. The said co-accused Anand Singh @ Andy named one Lakshay Jain as the source of the contraband. Three tracking IDs were found on the phone of co-accused Lakshay. Two of these parcels were seized at FPO, Delhi on 20.10.2023 and 22.10.2023 respectively, and a recovery of 112g of Cannabis was made from each parcel respectively. The third parcel was seized at FPO, Mumbai on 28.10.2023 and a recovery of 105.7g of Cannabis was made from the same as well.

5. The learned counsel for the applicant submitted that the applicant is innocent and has been falsely implicated in the present case.

6. He submitted that there is a discrepancy in the report of the field testing kit and FSL. He submitted that as per the prosecution, in the field testing kit, one of the contrabands seized from the applicant's car tested positive for MDMA, however, the FSL report indicates that the seized contraband was methamphetamine, which casts doubt on the case of the prosecution.

7. He submitted that even though the alleged recovery happened in a public place, there are no independent witnesses and no endeavour was made by the prosecution to photograph or videotape the alleged recovery either.

8. He further submitted that the applicant was arrested on 22.08.2023 and only charges have been framed in the present case till date. He submitted that the trial is not likely to conclude in a timely manner.

9. Per contra, the learned Additional Public Prosecutor for the State vehemently opposed the grant of any relief to the present applicant and submitted that the present case involves recovery of commercial quantity, whereby, rigours of Section 37 of the NDPS Act are attracted against the applicant.

10. He submitted that the applicant is the kingpin of the network and he has bank transactions with some of the other co-accused persons.

11. He further submitted that the present applicant is a habitual offender and had been previously convicted in an NDPS Case in Haryana.

Analysis

12. 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.

13. 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 in cases pertaining to commercial quantity. 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."

14. It is the case of the prosecution that the applicant was apprehended and a recovery of multiple contrabands, including, charas, ganja, MDMA and metamphetamine, was effected during the applicant's personal search and from his car. Subsequently, a recovery of MDMA@ecstasy was also effected from the applicant's home. It is alleged that the applicant also has financial transactions with other accused persons and he is the kingpin of the syndicate as he was delivering drugs in the guise of Flipkart.

15. The counsel of the applicant has pressed the present bail application on essentially three grounds – discrepancy in identification of one of the seized contrabands, non-joinder of independent witnesses or corroborative photographs or videography and delay in trial.

16. Insofar as the discrepancy in the field testing kit and FSL report is concerned,

it is pertinent to note that admittedly, at the time of the alleged recovery, the contraband seized from the applicant's pocket tested positive for MDMA in the field testing kit, however, when the same was sent to FSL, the contraband tested positive for methamphetamine. A bare perusal of the bail dismissal order passed by the learned Trial Court indicates that the Court was weighed by the explanation of the prosecution that the field testing kit contains few limited samples and highly synthesized salts cannot be detected from the same. While the veracity of the prosecution's explanation in this regard can only be tested during the course of trial, at this stage, in the absence of any supporting material to lend credence to the aforesaid assertion, the argument of the prosecution cannot be taken on a demurrer and the benefit of the ex facie discrepancy has to be accorded to the applicant, especially when the prosecution's case against the applicant is essentially helmed on the recoveries effected from him. However, apart from MDMA, other contrabands have also been allegedly recovered from the possession of applicant and, therefore, the applicant cannot be admitted on bail solely for the said reason.

17. Apart from the recoveries, the only material against the applicant is stated to be the financial transactions of the applicant with co-accused. At this juncture, in the opinion of this Court, in the absence of any cogent evidence which establishes that the transactions were for the purpose of dealing in the contrabands, mere monetary transactions do not establish the applicant's complicity in the commission of the offence.

18. Furthermore, it is pointed out that no independent witnesses were joined by the prosecution to corroborate the recoveries and no photography or videography was done either.

19. Undoubtedly, the case of the prosecution cannot be rejected merely on account of the case being tethered on the testimonies of official witnesses and non-examination of independent witnesses or absence of photography and videography of the recovery. The same would not be fatal to the prosecution's case. Reliance on the testimonies of official witnesses is sufficient to secure conviction once it is established that the police witnesses have no animosity against the accused person so as to falsely implicate him. The testimonies of the official witnesses cannot be disregarded merely on account of them being police officials.

20. However, it cannot be denied that the lack of independent witnesses and photography or videography, in some circumstances, casts a shadow over the case of the prosecution. This Court in the case of *Bantu v. State Govt of NCT of Delhi*: 2024: DHC: 5006 has observed that while the testimony of independent witness is sufficient to secure conviction if the same inspires confidence during the trial, however, lack of independent witnesses in certain cases can cast a doubt as to the credibility of the prosecution's case. It was held that when the Investigating Agency had sufficient time to prepare before the raid was conducted, not finding the public witness and lack of photography and

videography in today's time casts a doubt to the credibility of the evidence.

21. In the present case, the applicant was apprehended around 12:40 am in a public place on the basis of a secret information that was received at around 11:30pm on the same night. No explanation is provided for not doing any photography or videography and only a mechanical explanation is provided that although attempts were made by the raiding party to join independent witnesses prior to apprehending the applicant and before his search as well, however, the said persons left by citing their reasons. The same makes it clear that the non-joinder of independent witnesses was not on account of lack of individuals in the area at that hour. While the veracity of the explanation of the prosecution for non-joinder of independent witnesses and for absence of photography and videography will be tested during the course of the trial, at this stage, the benefit of the lack of corroboration cannot be denied to the applicant.

22. Even otherwise, it is also relevant to note that in the present case, the applicant has been in custody since 22.08.2023 and only charges have been framed in the case till now despite lapse of two years since the applicant's arrest. It is well settled that grant of bail on account of undue delay in trial 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. State*²¹ 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)

23. 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.

24. 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)

25. The object of jail is to secure the appearance of the accused during the trial. The object is neither punitive nor preventive and the deprivation of liberty has been considered as a punishment. Various courts have recognized that prolonged incarceration undermines the right to life, and liberty, guaranteed under Article 21 of the Constitution of India, and therefore, conditional liberty must take precedent over the statutory restrictions under Section 37 of the NDPS Act. In the present case, it is stated that the matter is now listed before the learned Trial Court on 28.03.2026 for evidence. As it is evident that the trial is not likely to be concluded in the near future, the applicant cannot be made to spend the entire period of trial in custody especially when speedy trial does not seem to be a possibility.

26. Much emphasis has been laid by prosecution on the applicant being convicted

in an NDPS case in Haryana. While the prior involvements of the accused are of significant importance in NDPS matters, it is important to note that the appeal challenging the said conviction is pending before the Hon'ble Punjab and Haryana High Court and the applicant's sentence has already been suspended in that case. It is also pointed out that the contraband recovered from the applicant in that case was 20g of Heroin, which is small quantity, and while suspending the sentence of the applicant the Hon'ble High Court of Punjab and Haryana duly noted the pendency of the present case.

27. In such circumstances, considering that the applicant has already spent a significant time in custody and he has been able to make out a prima facie case for grant of bail on merits, in the opinion of this Court, his prior involvement cannot come in the way of grant of liberty to the applicant.

28. However, appropriate conditions ought to be imposed on the applicant to allay any apprehension of him tampering with the evidence.

29. In view of the above, the applicant is directed to be released on bail on furnishing a personal bond for a sum of ₹ 25,000/- 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 informing the concerned IO/SHO;
- c. The applicant shall appear before the learned Trial Court as and when directed;
- d. The applicant shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/SHO;
- e. The applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.

30. 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.

31. 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.

32. The bail application is allowed in the aforementioned terms. Pending application, if any, also stands disposed of.