

(2025) 12 DEL CK 1818

In the Delhi High Court

Case No : Bail Application No. 3700 Of 2025 & Criminal Miscellaneous
Application No. 28927 Of 2025

Shiv Lal Ahir

APPELLANT

Vs

State Of Nct Of Delhi

RESPONDENT

Date of Decision : 18-12-2025

Acts Referred:

Constitution of India, 1950 — Article 21

Code of Criminal Procedure, 1973 — Section 436A

Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 15, 25, 29, 37, 37(1)
(b)(ii)

Citation : (2025) 12 DEL CK 1818

Hon'ble Judges : Amit Mahajan, J

Bench : Single Bench

Advocate : Rahul Sharma, Deepak Ghai, Saurabh Dwivedi, Pankaj, Chanchal
Jakhar, Sanjeev Sabharwal

Final Decision : Allowed

Judgement

Amit Mahajan, J

1. The present application is filed seeking regular bail in FIR No. 288/2019 dated 28.09.2019, registered at Police Station Crime Branch for offences under Sections 15/25/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act')

2. Briefly stated, on 28.09.2019, on the basis of a secret information in relation to supply of doda post by the applicant in his truck number RJ-27-GC-0063 to one Satender @ Chotu having godown in Bakoli, Delhi, a raid was conducted and the applicant along with co-accused Hem Raj and Satender @ Chotu were apprehended. It is alleged that from the search of the truck bearing no. RJ-27-GC-0063, 15 plastic bags (containing 14 kg doda post in each bag) was recovered. It is alleged that a recovery of 14 plastic bags (containing 14 kg doda post in each bag) was effected. It is further alleged that another 35 poly pack

packets (containing 350/360 grams of doda post each) were recovered from the godown. During the search of the godown, two grinding machines, 1 weighing machine, 1 sewing machine for the bags was also found which was allegedly used by co-accused Satender @ Chotu for grinding and converting the doda post into powder form.

3. During the course of the investigation, the accused persons including the applicant were arrested on 29.09.2019. It is alleged that their disclosure statements were recorded and the Swift Dzire Car bearing no. DL-12 CC-2574 used by the co-accused Satender@Chotu, one bag containing 1240 polypack packing, one packing machine, cash amount of ₹ 50,000/-, documents related to 65 Plastic rolls and the key of the godown were also found and seized. It is the case of the prosecution that a recovery of a total quantity of 418.250 kg of doda post was effected from the applicant and his associates which is a commercial quantity.

4. The learned counsel for the applicant submits that the applicant is innocent and has been falsely implicated in the present case. He submits that the applicant was arrested way back on 29.09.2019. He submits that out of 32 witnesses, only 7 witnesses have been examined till date. He submits that in such circumstances, the trial is not likely to conclude in the near future. He submits that the applicant has clean past antecedents, and prays that the applicant be enlarged on bail.

5. Per contra, the learned Additional Public Prosecutor for the State vehemently opposes the grant of any relief to the applicant. He submits that the present case involves recovery of commercial quantity of contraband and the rigours of Section 37 of the NDPS Act are attracted against the applicant.

6. I have heard the counsel and perused the record.

7. 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.

8. 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.

9. In the present case, while a perusal of the record indicates that no independent witness was joined by the prosecution and no videography/photography of the search and seizure was effected, the sole ground pressed by the applicant before this Court to seek bail is on account of the delay in trial.

10. In that regard, it is pertinent to note that the applicant was arrested way back on 29.09.2019. A perusal of the Status Report indicates that the trial is still at the stage of examination of prosecution witnesses and only 7 out of 32 listed witnesses have been examined till now. The trial in such circumstances is not likely to conclude in the near future.

11. It is trite that grant of bail on account of delay in trial and long period of incarceration 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. State²¹ 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)

12. 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 a considerable amount of time.

13. 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)

14. 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 precedence over the statutory restrictions under Section 37 of the NDPS Act.

15. It cannot be denied that the applicant has already spent substantial period in custody and the trial is unlikely to conclude in the near future. 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. delay in the completion of the trial.

16. The applicant is also stated to be of clean antecedents and is thus not likely to commit any offence whilst on bail.

17. The applicant is, therefore, 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 the permission of the Trial Court;
- c. The applicant shall appear before the learned Trial Court as and when directed;

d. The applicant shall, after his release, appear before the concerned IO once every month;

e. The applicant shall provide the address where he would be residing after his release to the concerned IO/SHO and shall not change the address without informing the concerned IO/SHO;

f. The applicant shall, upon his release, give his mobile number to the concerned IO and shall keep her mobile phone switched on at all times.

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

19. 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.

20. The bail application is allowed in the aforementioned terms.