



2025:DHC:8587



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment pronounced on: 25 September, 2025

+ BAIL APPLN. 2999/2024

SANTOSH CHAUDHARYPetitioner

Through: Mr. Amjad Khan & Mr. Sumit
Kumar, Advocates

versus

STATERespondent

Through: Mr. Aman Usman, APP for the
State with SI Ram Pratap,
Narcotics Spl. Cell.**CORAM:**
HON'BLE MR. JUSTICE RAVINDER DUDEJA**J U D G M E N T****RAVINDER DUDEJA, J.**

1. This is an application under Section 483 Bhartiya Nagarik Suraksha Sanhita, 2023 [“BNSS”] read with Section 528 BNSS, 2023 filed on behalf of the petitioner for grant of regular bail in Case FIR No. 585/2022 for the offence under Section 20 NDPS Act, registered at PS Malviya Nagar.



2. Learned counsel for the petitioner submits that the alleged recovery is of 1040 grams of Charas, but as per the order dated 27.09.2022, passed by the learned Metropolitan Magistrate under Section 52-A NDPS Act, the net quantity of the recovery was 1.022 grams, out of which, about 50 grams was taken out as sample, so the left over net quantity should be 972 grams. However, the order dated 27.09.2022 shows the remaining narcotic to be 0.924 grams, which clearly shows a huge difference of 48 grams. The discrepancy points out that the alleged recovery is false and fabricated.

3. It is further submitted that the samples were supposed to be sent within 72 hours to the FSL from the date of the alleged seizure of the samples. However, they were sent to FSL with a considerable delay of 23 days on 23.10.2022. Thus, there is a violation of Section 52-A of the NDPS Act. The learned counsel further submits that the prosecution case suffers from multiple violations of mandatory provisions of the NDPS Act. It is argued that the authorization under Section 41(2) of the NDPS Act was issued to Inspector Umesh Yadav, who did not participate in the raid and instead delegated the search and seizure to SI Narender Singh rendering the recovery illegal.

4. It is further contended that no independent witness was joined in the recovery. There is no videography/photography at the time of recovery.

5. It is submitted that petitioner has no past criminal antecedents



and has been in custody for about three years and prolonged incarceration offends Article 21 of the Constitution. Reliance was placed on ***Dhiraj Kumar Shukla Vs. State of U.P.***, Special Leave to Appeal (Criminal) No. 6690/2022, ***Rabi Prakash Vs. State of Orissa***, Special Leave to Appeal (Criminal) No. 4169/2023 & ***Amit Singh Chauhan Vs. State of NCT of Delhi***, Bail Application No. 2260/2024 to submit that the petitioner deserves bail as there is no reasonable ground to believe that he is guilty and is likely to commit the similar offence again.

6. *Per contra*, the learned APP, appearing for the State, while referring to the testimony of ACP Mukesh Tyagi, submits that it was he, who directed SI Narender Singh to conduct the raid and take action as per law. It is urged that this fact is fully corroborated with the FIR and supports the prosecution version. He further contends that the statement made by Inspector Mukesh Yadav is immaterial in the present case as authorization and direction clearly flowed from the ACP. It is thus argued that there is no violation of Section 41(2) of the NDPS Act, as alleged by the defence.

7. Placing reliance on the decision in the case of ***Kamal Thakur Vs. State*** 1995 Criminal Law Journal 980, it has been submitted that Section 42 of the Act authorises the Officer superior in rank to a Peon, Sipoy or Constable of the relevant departments empowered by general or special order of the Central or State Government to enter, search,



seize and arrest without warrant or authorisation, and therefore in the present case, SI Narender Singh was duly empowered to conduct raid and effect the recovery.

8. Briefly stated, the facts as per status report are that on 20.09.2022 at about 4.10 pm, SI Narender Singh of Narcotic Squad, South District, New Delhi received a secret information that a Nepali National, residing in Chirag Delhi, would arrive near Hanuman Park, Ramleela Ground, Chirag Delhi to supply Charas. The information was verified and reduced into writing vide DD No. 05 and a raiding team was constituted after obtaining permission from the superior officers. On the pointing out of the secret informer, petitioner Santosh Chaudhary was apprehended with a pink polythene in his hand. Notice under Section 50 NDPS Act was served to him but petitioner declined the search before the Magistrate or a Gazette Officer. ACP Mukesh Tyagi arrived at the spot and on his directions, the polythene was checked and 1.040 kgs of Charas was recovered and seized.

9. On 23.09.2022, an application for sampling of the recovered contraband was filed before the trial court. The application was fixed for 27.09.2022. The sampling of the recovered Charas was done on 27.09.2022. The weight of the contraband with polythene during sampling procedure in court was found to be 1.042 kgs. The net weight of contraband without polythene was 1.022 kgs. Two samples of 50 grams were drawn from the net weight in two separate



containers. Hence, the remaining contraband after drawing the samples should have been 0.922 kgs. whereas, the remaining sample was found to be 0.924 kg. There is a difference of 0.002 kg (2 grams).

10. In view of the fact that there was only a minor difference in weight of the recovered contraband i.e. 2 grams, the learned Sessions Court was of the view that the same could be explained due to use of different weighing scales or other environmental reasons, which is a matter of trial and because of small difference of 2 grams in weight taken at two different times, the same does not render the case of prosecution unbelievable. The difference of 2 grams in weight taken at two different times is not abnormally high which would render the prosecution case unbelievable.

11. 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 27.09.2022 and were sent to FSL, Rohini on 03.10.2022. However, status report reveals that the same was returned back with objection that the sample was not sealed with wax seal. Thereafter, on 06.10.2022, the court was apprised about the objection raised by the FSL, upon which, the learned MM listed the application before the concerned court on 07.10.2022. Accordingly, the application was placed before the court of ASJ on 07.10.2022 for putting up the wax



seal on the sample, on which, the court fixed the next date as 12.10.2022. On 12.10.2022, learned Sessions Court passed directions to the FSL to accept the sample in the manner it was prepared by the learned MM.

12. Since the samples were sent for the first time on 03.10.2022, there was no inordinate delay in sending the samples to FSL. Moreover, the Supreme Court in the case of **NCB Vs. Kashif, 2024 SCC OnLine 3848**, 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 the investigation as inadmissible, and any lapse or delay in compliance of Section 52-A by itself would neither render the trial nor would it entitle the accused to be released on bail being a procedural irregularity, and therefore, accused is not entitled for the grant of bail on this ground alone. The relevant paragraph of the judgment 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."

13. In view of the aforesaid position of law, as explained by the Apex Court, the delay in drawing the samples or in depositing the same in FSL being a procedural irregularity would not vitiate the trial.

14. 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”.

15. Admittedly, there is no public witness of recovery, but the same by itself cannot be considered a ground for grant of bail, inasmuch as, the evidentiary value of the testimonies of the police witnesses would be determined during the trial. 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.

16. Admittedly, there is no videography/photography of the incident. The same was not a mandatory requirement under the Code of Criminal Procedure. No doubt, the use of technology certainly enhances the efficacy and transparency of the police investigation and assures fairness, and therefore, every effort should be made by the investigating office to use technological means in aid of investigation.



At the same time, it cannot be ignored that the tools for videography/photography were not earlier available with the Investigating Officers in the year 2022, and therefore, the version of the police cannot be disbelieved merely because the search and seizure were not videographed/photographed.

17. As per FIR, SI Narender Kumar produced the secret informer before Inspector Narcotics Squad Mr. Umesh Yadav, who after satisfying about the secret information, passed on the information to ACP (Operations) Mr. Mukesh Tyagi, who issued directions for taking the appropriate action. Thereupon, on the orders of Inspector Umesh Yadav, SI Narender Kumar recorded DD No. 05 in the Roznamcha and sent the same to the senior officers in compliance of Section 42 of the NDPS Act.

18. In his testimony before the court, PW-3 Inspector Umesh Yadav has deposed that he had telephonically informed ACP Mukesh Tyagi about the information, and after enquiry, ACP Mukesh Tyagi directed Inspector Umesh Yadav to take appropriate action, and accordingly, he directed SI Narender Kumar to conduct raid. However, PW-4 ACP Mukesh Tyagi, in his testimony before the court, deposed that he had verified the information from Inspector Umesh Yadav and had also talked with SI Narender and after satisfaction, he directed SI Narender to conduct raid and take legal action as per law, authorizing him for search and seizure.



19. It is therefore prima facie evident from the testimony of PW-4 that directions were issued by ACP Mukesh Tyagi to SI Narender Kumar to conduct the raid and take legal action. Not only this, as per FIR as also as per the testimony of PW-4, ACP Mukesh Tyagi himself had visited the spot and supervised the investigation and recovery was affected in his presence. Prima facie, there is no apparent non-compliance of Section 41(2) of the NDPS Act. Nevertheless, the trial court would be at liberty to determine the aspect of non-compliance on the basis of due appreciation of evidence at the time of final adjudication.

20. The alleged recovery from the petitioner is of 1040 grams of Charas, which falls within the category of commercial quantity. Consequently, the rigors of Section 37 of the NDPS Act would be attracted in the present case, and which are mandatory in nature. The recording of finding as mandated in Section 37 is *sine qua non* for granting bail to the accused involved in the offences under the said Act. The twin conditions provided in the said Section are (i) satisfaction of the court that there are reasonable grounds for believing that accused is not guilty of the alleged offence and (ii) he is not likely to commit an offence while on bail. Both these conditions are cumulative and not alternative.

21. In my view, the narrow parameter of bail available in Section 37 of the Act has not been satisfied in the facts of the present case.



Petitioner has not been able to overcome the twin hurdle of Section 37.

22. Accused is stated to be in custody for the last about three years. The Court is conscious of its duty to strike a balance between individual liberty and the larger societal interest. The objective behind the enactment of the NDPS Act is to create a comprehensive legal framework to tackle the twin challenges of drug abuse and drug trafficking in India and also to fulfill India's obligation under the international conventions. Granting bail at this juncture would risk compromising both the trial and the public confidence in the justice system. The seriousness of the charge, the weight of the evidence and the statutory scheme, all point in one direction. Petitioner has not shown any circumstances exceptional enough to justify departure from that path. Continued custody is thus warranted.

23. The allegations against the petitioner are grave and serious in nature. Hence, keeping in view the entire facts and circumstances, the nature and gravity of allegations, severity of punishment and in view of the bar under Section 37 of the NDPS Act, the Court is not inclined to grant bail to the petitioner.

24. The petition is therefore dismissed.

25. Nothing contained in this order shall tantamount to be an expression on the merits of the case.



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26. Copy of this order be sent to the petitioner through Superintendent Jail for information.

RAVINDER DUDEJA, J.

25 September, 2025

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