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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

CNR No. DLHC010304382026

+ **BAIL APPLN. 2713/2026**

KAMLESH KUMAR SHUKLAPetitioner

Through: Appearance not given.

versus

STATE NCT OF DELHIRespondent

Through: Ms. Shubhi Gupta, APP for the State.
SI Rahul, PS: Crime Branch.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

% **03.08.2026**

1. By way of the present application, the applicant seeks grant of regular bail in connection with FIR No.79/2024 for the offences punishable under Section 20/25/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 [**NDPS Act**] registered at police station Crime Branch Delhi.
2. Learned counsel appearing for the applicant submits that he is innocent and has been falsely implicated. According to him, the applicant has already suffered more than two years and three months of incarceration. There is no other criminal case pending against him. The other co-accused persons, namely, Sujit Kumar Shah, Harish Chandra Shukla and Ansh Shukla (CCL) have already been enlarged on bail.
3. The submissions are opposed by learned counsel appearing for the State, and she submits that bearing in mind the recovery of the commercial



quantity of the contraband material i.e. *ganja*, the applicant is not entitled for bail. It is submitted that the case of the present applicant stands on a different footing than the case of the co-accused persons. It is stated that the applicant was seen in CCTV footage and his complicity has been established by the Investigating Agency.

4. I have considered the submissions made by learned counsel appearing for the parties and have perused the record.

5. The facts of the case would indicate that the applicant along with Sujit Kumar Shah and Ansh Shukla (CCL) were found to be in possession of the contraband material i.e. 50 kg *ganja*.

6. The Court while considering the bail application of Sujit Kumar Shah in the case of Bail Appn.1538/2205 in paragraphs 7 to 12, made the following observations:

“7. It transpires that the applicant on the fateful day had accepted the other co-accused as the travellers, namely Kamlesh Kumar and Ansh Shukla and may have not been aware of the contents of the bags which were being carried by them. At the time of recovery of the contraband, i.e. the cannabis (Ganja), the co-accused were since found to be travelling in the auto rickshaw which was being driven by the applicant, he was presumed to be one of their accomplice and based on that suspicion, he was taken into custody

8. As regards the objection of learned APP qua the call detail record, learned counsel for the applicant would submit that the travellers used to hire his auto rickshaw frequently. Therefore, they had exchanged their telephone number with each other and quite frequently, whenever the auto rickshaw was required to be hired, he was telephonically informed by the co-accused. Regardless, he would submit that the applicant was not aware of the nature of activities being carried out by the co-accused.

9. The applicant has been in custody for more than a year and four months. The chargesheet has been filed and all the witnesses are formal witnesses, no recovery is due to be made from the applicant and the trial is likely to take long time as it is proceeding at a snail's pace.



10. Applicant is being kept in preventive custody merely on an unfounded suspicion that if he is let out, he may either tamper with evidence and/ or influence witnesses. There is no probability of tampering with evidence as the same has already been seized by the investigating agency. As regards witnesses, they are all official and therefore, unlikely to be influenced, even if there is any such apprehension by the prosecution.

11. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Trial is likely to take long time as it is proceeding at a snail's pace. Whereas, applicant has already been in jail for the past more than (being behind bars since 15.04.2024) 1 year and 4 months.

12. The applicant is stated to be the sole breadwinner of his family and belonging to the lower strata of the society earning his livelihood by driving Auto Rickshaw. He is responsible to tend to his elderly parents, wife and children who are solely dependent on him for survival. In his absence, the family is moving towards literal starvation and penury."

7. With respect to Harish Chand Shukla, the Court in paragraphs 7 onwards has made almost similar observations:

"7. It transpires that the contraband which is stated to be cannabis (in the natural form of leaves and dried flowers, popularly also known as 'grass'/ganja) was recovered from the other co-accused. Apart therefrom, on a specific query put to the learned APP qua nature of the same, as to whether it was in concentrated form or in the natural, it has been confirmed from the seizure memo which has been brought to the Court by the IO that the contraband was being carried indeed in the form of grass/ leaves and flowers etc. i.e. in its natural form.

8. It is only in course of the investigation that based on the disclosure statement, the name of the applicant emerged. The disclosure statement is also stated to be that of his own son, who is a juvenile as well as another coaccused, who is stated to be an acquaintance of his son.

9. Furthermore, the applicant has already been in custody for more than 1 year and 3 months and the trial is proceeding at snail's pace. As regards the applicant either jumping the bail or otherwise not making himself available during the trial or committing the repeat offences. the same seems to be rather an unfounded suspicion, as he is stated to be serving for Border Security Force as Assistant Sub Inspector though, of course, currently under suspension due to the criminal proceedings arising out of the FIR in question.



10. Applicant is being kept in preventive custody merely on an unfounded suspicion that if he is let out, he may either tamper with evidence and/ or influence witnesses. There is no probability of tampering with evidence as the same has already been seized by the investigating agency. As regards witnesses, they are all official and therefore, unlikely to be influenced, even if there is any such apprehension by the prosecution.

11. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Trial is likely to take long time as it is proceeding at a snail's pace.

12. The applicant is stated to be the sole breadwinner of his family. His wife suffers from Phaleria and swollen legs, he also has a child to take care of, and in his absence, family is moving towards literal starvation and penury.

13. Considering the totality of facts and circumstances, the stage of the trial, the role attributed to the applicant in the FIR and nature of the contraband, I am of the view that this is a fit case for granting bail to the applicant at this stage.

14. In the premise, application is allowed. The applicant is directed to be released on bail on his furnishing bail bonds and surety of an equivalent like amount to the satisfaction of the Trial Court/Duty Judge concerned as the case may be, subject to the usual conditions to be imposed by the learned Trial Court.

15. Any observation made herein above is only for the purpose of disposing of the instant bail application and not to be construed, in any manner, as any expression on the merits of the pending case and the trial shall proceed without being influenced either way by the same. In case, applicant is found to be involved or gets involved in any offence while on bail, the prosecution shall be at liberty to seek cancellation of his bail in the instant case.

16. Accordingly, the bail application stands disposed of."

8. It be noted that as per the prosecution story, the delivery was received from Harish Chandra Shukla. It is the prosecution case that Harish Chandra Shukla was the kingpin. The applicant and Sujit Kumar Shah both have been attributed to have possessed 25.530 kg and 20,940 kg of *ganja*, respectively. It is, thus, seen that even the recoveries have been made from both the



applicants.

9. There can be no quarrel with the proposition that the alleged recovery is of commercial quantity and, therefore, the embargo contained in Section 37 of the NDPS Act would ordinarily govern the consideration of the present application. Equally, however, it is now well settled that the restrictions under Section 37 cannot be construed in a manner so as to completely eclipse the constitutional guarantee of personal liberty under Article 21 of the Constitution of India, particularly where an undertrial has remained incarcerated for an unduly long period and the trial shows no real prospect of early conclusion.

10. The Supreme Court in the case of ***Rabi Prakash versus The State Of Odisha***,¹ has duly observed:

“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]

11. In ***Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India***,² recognised that while Section 37 of the NDPS Act imposes stringent conditions for the grant of bail, denial of bail coupled with prolonged delay in trial would result in continued deprivation of personal liberty without a timely adjudication of guilt, a consequence

¹ 2023 SCC OnLine SC 1109

² (1994) 6 SCC 731



incompatible with the guarantee of a fair and speedy trial under Article 21 of the Constitution:

*"15. On account of the strict language of the said provision very few persons accused of certain offences under the Act could secure bail. **Now to refuse bail on the one hand and to delay trial of cases on the other is clearly unfair and unreasonable and contrary to the spirit of Section 36(1) of the Act, Section 309 of the Code and Articles 14, 19 and 21 of the Constitution.** We are conscious of the statutory provision finding place in Section 37 of the Act prescribing the conditions which have to be satisfied before a person accused of an offence under the Act can be released. Indeed we have adverted to this section in the earlier part of the judgment. We have also kept in mind the interpretation placed on a similar provision in Section 20 of the TADA Act by the Constitution Bench in Kartar Singh v. State of Punjab [(1994) 3 SCC 569]. Despite this provision, we have directed as above mainly at the call of Article 21 as the right to speedy trial may even require in some cases quashing of a criminal proceeding altogether, as held by a Constitution Bench of this Court in A.R. Antulay v. R.S. Nayak [(1992) 1 SCC 225], release on bail, which can be taken to be embedded in the right of speedy trial, may, in some cases be the demand of Article 21. As we have not felt inclined to accept the extreme submission of quashing the proceedings and setting free the accused whose trials have been delayed beyond reasonable time for reasons already alluded to, we have felt that deprivation of the personal liberty without ensuring speedy trial would also not be in consonance with the right guaranteed by Article 21. Of course, some amount of deprivation of personal liberty cannot be avoided in such cases; but if the period of deprivation pending trial becomes unduly long, the fairness assured by Article 21 would receive a jolt."*

[Emphasis supplied]

12. The Supreme Court in ***Union of India v. K.A. Najeib***,³ held that statutory restrictions on the grant of bail, including those contained in special enactments such as Section 43-D(5) of the UAPA and NDPS Act, do not denude constitutional courts of their power to grant bail where continued incarceration results in a violation of the fundamental right to personal liberty and speedy trial guaranteed under Article 21 of the Constitution.

"12. Even in the case of special legislations like the Terrorist and Disruptive Activities (Prevention) Act, 1987 or the Narcotic Drugs and Psychotropic Substances Act, 1985 ("the NDPS Act") which too have somewhat rigorous

³ (2021) 3 SCC 713



conditions for grant of bail, this Court in Paramjit Singh v. State (NCT of Delhi), (1999) 9 SCC 252] , Babba v. State of Maharashtra, (2005) 11 SCC 569 and Umarmia v. State of Gujarat, (2017) 2 SCC 731 enlarged the accused on bail when they had been in jail for an extended period of time with little possibility of early completion of trial. The constitutionality of harsh conditions for bail in such special enactments, has thus been primarily justified on the touchstone of speedy trials to ensure the protection of innocent civilians.”

“15. This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India, it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, the courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.”

[Emphasis supplied]

13. The aforesaid principle has been specifically applied to prosecutions under the NDPS Act by the Supreme Court in **Mohd. Muslim @ Hussain v. State (NCT of Delhi)**⁴. The Court observed that an interpretation of Section 37 which results in an accused remaining in custody for years awaiting conclusion of trial would militate against the guarantee of a speedy trial under Article 21.

“22.....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.”



Bearing in mind the overall facts and circumstances of the case, the long incarceration of the applicant, of about two years three months, as also the factum of only 2 out of 21 witnesses having been examined, the trial taking sufficient time for completion, and furthermore because there is no other criminal case pending against the applicant and the applicant is a first-time offender, this Court deems it appropriate to enlarge the application on regular bail.

14. In view of the aforesaid, the applicant is granted regular bail subject to such terms and conditions as may be imposed by the trial Court.

15. Application stands disposed of.

PURUSHAINDR KUMAR KAURAV, J

AUGUST 3, 2026/p

⁴ (2023) 18 SCC 166