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

CNR No. DLHC010744852025

+ **BAIL APPLN. 3744/2025**

IKRAM @ KASHIM

.....Petitioner

Through: Mr. Aditya Aggarwal, Ms. Manvi Gupta, Mr. Yasir and Ms. Bhumika, Advocates.

versus

STATE GOVT OF NCT OF DELHI

.....Respondent

Through: SI Rahul Bairwa, PS: Samaypur Badli.
Ms. Raveena K. Kashyap and Ms. Jyoti Kashyap, Advs. for victim.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

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03.09.2026

1. The applicant, by way of the present application, seeks regular bail in connection with FIR No. 504/2021, registered at Police Station Samaipur Badli, Delhi, for offences punishable under Sections 20, 29 and 85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("NDPS Act").
2. Mr. Aditya Aggarwal, learned counsel appearing for the applicant, fairly concedes that the applicant had earlier approached this Court seeking grant of regular bail, however, the said applications were dismissed as withdrawn. It is submitted that none of the said applications was rejected on merits and that the present application is the first application being



considered on merits. Learned counsel submits that 24.680 kg of *ganja* was recovered from the joint possession of the applicant and co-accused Joinal Sheikh Hussain. The vehicle from which the contraband was recovered was owned by co-accused Joinal Sheikh Hussain, who has already been granted regular bail by this Court *vide* order dated 10.01.2025 in Bail Appln. 1779/2024. It is further submitted that the quantity of contraband recovered is only marginally above the intermediary quantity.

3. Learned counsel further points out that the applicant had undergone three years, ten months and eighteen days of incarceration as on 18.04.2026 and, as of now, his period of incarceration is approximately four years and two months. It is submitted that the trial is likely to take considerable time to conclude. Out of the sixteen witnesses cited by the prosecution, six witnesses have been examined, while one witness has expired. The remaining witnesses are yet to be examined. It is thus contended that the applicant's continued incarceration is wholly unwarranted. More importantly, it is submitted that the applicant has no previous criminal antecedents.

4. The submissions advanced by learned counsel appearing for the applicant are opposed by Ms. Shubhi Gupta, learned APP appearing for the State. She submits that the quantity of contraband recovered is admittedly commercial in nature and, therefore, the rigour of Section 37 of the NDPS Act is attracted. She further submits that the mere fact that the applicant has no previous criminal antecedents cannot, by itself, constitute a ground for enlarging him on regular bail.

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



6. The facts of the case would indicate that, on the intervening night of 16-17.07.2021, acting upon secret information, an Ertiga car bearing registration No. DL-3C-CF-3172 was apprehended, which led to the recovery of 12 bundles, each weighing 2 kg, of *ganja*, totalling 24.680 kg. The applicant was arrested along with co-accused Joinal Sheikh Hussain, who was driving the said vehicle and is also its registered owner. On the basis of the aforesaid recovery, the present FIR was registered. The chargesheet has since been filed and the matter is presently pending trial.

7. The recovery involved in the present case is 24.680 kg of *Ganja*. Though *prima facie* the recovered quantity falls within the category of commercial quantity, it is only marginally above the prescribed commercial quantity of 20 kg. At this stage, it would be apposite to refer to the definition of “*Ganja*” as provided under Section 2(iii)(b) of the NDPS Act:-

“(b) *Ganja*, that is, the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever name they may be known or designated;”

8. A plain reading of the aforesaid provision makes it evident that the expression “*Ganja*” is confined to the flowering or fruiting tops of the cannabis plant. The seeds and leaves, when not accompanied by such flowering or fruiting tops, stand specifically excluded from the statutory definition of *Ganja*. Therefore, only such parts of the cannabis plant as fall within the ambit of Section 2(iii)(b) of the NDPS Act can be taken into consideration while determining the quantity of contraband recovered.

9. The aforesaid position has been reiterated by this Court in ***Ravina Kumari v. The State (NCT of Delhi)***¹, wherein this Court, by way of a Venn

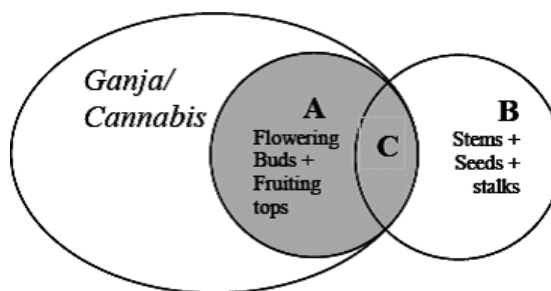
¹ 2024 SCC OnLine Del 6748



diagram, explained the legislative intent underlying the definition of *Ganja* as contained in the NDPS Act and clarified the scope and ambit of the statutory definition. The relevant paragraphs are extracted hereinbelow:-

“17. From the definition, it is evident that flowering buds and fruiting tops of the cannabis plant would be covered under section 2 (iii)(b) but merely leaves/seeds and stalks would not form a part of the definition of “Ganja” unless accompanied by the flowering and fruiting tops.

18. This can be represented accurately by the below Venn diagram:



*19. Thus, the intention of the Legislature appears to be clear that in case of Ganja, if it is merely **Category A** i.e. a homogenous mixture of flowering buds and fruiting tops, then the same would fall within the meaning of “Cannabis”, however, if it is merely **Category B** i.e. a homogenous mixture of seeds/leaves/stalks without the fruiting tops and buds, then the same would not attract the provisions of the NDPS Act.*

*20. Though the position with respect to homogenous mixtures i.e. **Category A & B** is clear, there is often a conundrum surrounding the quantification of **Category C**, i.e. the overlap between Category A and Category B constituting the heterogenous mixtures which include both the flowering tops and fruiting buds, along with the stems/leaves and seed.*

21. From the framework of the entire NDPS Act and a reading of S. 2 (iii)(b), it emerges that if the material seized is a heterogenous mixture/Category C, constituting of Category A mixed with Category B, the placebo material such as stalks/leaves/stems (Category B) would not constitute an actual part of the drug and only the actual content and weight of the narcotic drug (Category A) would be relevant for determining whether it would constitute small quantity or commercial quantity.

22. Similar observations have been made in the cases of Kunal Dattu Kadu (Supra) and Shri Sandip Ashok Raut (Supra) and it was held that to ascertain whether the material seized was Ganja, it will have to be ultimately ascertained whether the flowering and fruiting are accompanied by the seeds and leaves as the weight of these seeds/leaves/stems, has to be excluded.

*23. Axiomatically, the weight of seeds/stalks and stems (**Category B**) should be excluded while calculating the actual quantity (**Only Category A**) recovered.”*



10. A similar view has consistently been taken by this Court in several of its decisions, including ***Ashok Kumar v. State (Govt. of NCT of Delhi)***², ***Manjay Kumar v. State (NCT of Delhi)***³, ***Mujabil v. GNCT of Delhi***⁴, and ***Pawan Yadav v. State (NCT of Delhi)***⁵, amongst others.

11. Applying the aforesaid principles to the facts of the present case, it is evident that the alleged recovery is of 24.680 kg of material stated to be *Ganja*. The FIR, notes that:

“...The tape of the bundle was cut and opened and a strong smell of ganja was coming from inside, the color, smell and appearance of the items present in it appeared to be ganja, which after checking the items recovered from each twelve bundles with the help of field testing kit. Each packet, which was found to be marijuana, was packed with the help of blank tape..”

12. If the test laid down by this Court in ***Ravina Kumari*** (supra) is applied to the facts of the present case, it would be difficult, at this stage, to conclude that the entire recovered substance was accompanied by the flowering or fruiting tops of the cannabis plant so as to qualify as *Ganja* within the meaning of Section 2(iii)(b) of the NDPS Act. Significantly, the seizure memo does not specifically record that the entire contraband comprised flowering or fruiting tops. Rather, it generally describes the recovered material as a *ganja* on the basis of colour, smell and appearance, a description which may encompass leaves and other parts of the cannabis plant not accompanied by flowering or fruiting tops. Such parts are expressly excluded from the statutory definition of *Ganja* under the Act. Consequently, at this stage, it cannot be conclusively held that the entire

² BAIL APPLN. 2962/2025; Dated 21.11.2025

³ BAIL APPLN. 4206/2025; Dated 19.03.2026

⁴ 2026 SCC OnLine Del 1551



recovered material would qualify as *Ganja* for the purpose of determining the quantity of contraband under the NDPS Act.

13. In view of the aforesaid discussion, it *prima facie* appears that the weight of the contraband, as statutorily defined under Section 2(iii)(b) of the NDPS Act, may be less than the prescribed commercial quantity of 20 kg. In such circumstances, a substantial doubt arises, at this stage, regarding the applicability of the rigours of Section 37 of the NDPS Act. Consequently, whether the embargo contained under Section 37 of the Act would be attracted is a matter requiring consideration during trial upon appreciation of the evidence led by the parties.

14. In ***Ravina Kumari*** (supra), ***Mujabil*** (supra) and ***Pawan Yadav*** (supra), where the alleged recoveries were 23.465 kg, 21.950 kg, and 21.020 kg respectively, this Court adopted a similar approach. It was observed that where a *prima facie* discrepancy exists with regard to whether the entire recovered substance answers the statutory definition of *Ganja*, and consequently the actual weight of the contraband, the benefit of such uncertainty would enure to the accused at the stage of consideration of bail. In such circumstances, the rigours of Section 37 of the NDPS Act were held not to be attracted for the purpose of deciding the application for regular bail, leaving the issue to be conclusively determined during trial upon appreciation of the evidence

15. Reference may be made to paragraphs 5, 24 and 26 to 30 of the judgment in ***Ravina Kumari*** (supra). The relevant extracts are reproduced hereinbelow:

“5. It is pleaded that there is alleged recovery of 23.456 kg *Ganja* from

⁵ BAIL APPLN. 1097/2026; Dated 21.07.2026



her carry bag, included the leaves and stalks/ stems which does not fall in the definition of contraband material. Thus, without the stems, the actual quantity of Ganja would only be mere 3.465 Kg., i.e. much lesser than the commercial quantity of 20 kgs.

24. Evidently, the present case is of a recovery falling within Category C. The Chargesheet records that when the Petitioner/Ravina was apprehended, blue coloured plastic polythene bag was recovered from her which contained grass-like flowery-leafy material along with its stems, which appeared to be "Ganja" and was seized vide the seizure memo. On weighing, the recovered Ganja on the electronic weighing machine, the total weight of the quantity recovered, was about 24.145 Kg.

26. Pertinently, the recovered quantity of about 24.145 Kg was just 4.145 kgs more than the commercial quantity. Since, the entire substance including stems/stalks and dried leaves were weighed together without quantifying the weight of the flowering or fruiting tops, the quantity of 'Ganja' seized from the Applicant may be less than commercial quantity so as to attract Section 20 of the NDPS Act. The weight of actual Ganja recovered is a matter of trial.

27. It has been consistently held that if there is a prima facie discrepancy in what was seized and what was analysed and weighed and there are reasonable grounds to believe that the petitioner is not guilty of offences dealing in commercial quantity. Consequently, the rigors of Section 37 of the NDPS Act, 1985 for grant of regular bail, would not become applicable as has been held in the case of Ibrahim Khwaja Miya Sayyed (Supra).

28. In the case of Suresh Kumar (Supra), the Coordinate Bench of this Court gave benefit to the accused under Section 20(b)(C) to 20 (b) (ii)(B) by observing that the weight of the contraband was not precise and the actual quantity of Ganja seized could not be determined because the FSL reflected that seeds, which do not come within the definition of Ganja, were weighed along with the flowering and fruiting tops. Thus, when there is a doubt on the actual amount of recovery of contraband, then this unexplained discrepancy would result in a benefit accruing in favour of the bail applicant.

29. Similar observations have been made in the case of Rajesh Sharma (Supra), Bettanayaka (Supra), Ratanlal (Supra) and Ratnesh (Supra).

30. **In light of the above discussion, it is settled that if there is the discrepancy in weight, as in the present case, the same would be a matter of trial."**

16. In the present case, the alleged recovery is only marginally above the commercial quantity. The FIR merely describes the recovered substance as a *ganja* on the basis of colour, smell and appearance and does not specifically



record that the entire recovered material comprised the flowering or fruiting tops of the cannabis plant.

17. However, even otherwise, whether the contraband recovered constitutes commercial quantity, particularly having regard to the manner of its recovery and the evidence that may be adduced by the prosecution, is a matter which would eventually fall for consideration before the learned Trial Court at the stage of final adjudication. At this stage, this Court is not required to conclusively determine the said issue. Equally, 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 the applicant has remained incarcerated for an unduly long period and the trial shows no real prospect of early conclusion.

18. The Supreme Court in the case of ***Rabi Prakash versus The State Of Odisha***,⁶ 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]

19. In ***Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India***,⁷ recognised that while Section 37 of the

⁶ 2023 SCC OnLine SC 1109

⁷ (1994) 6 SCC 731



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 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]

20. The Supreme Court in ***Union of India v. K.A. Najeeb***,⁸ 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 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]

21. 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)**⁸. 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

⁸ (2021) 3 SCC 713

⁹ (2023) 18 SCC 166



facts of this case, the appellant deserves to be enlarged on bail.”

22. Tested on the aforesaid principles, this Court finds that the applicant has remained in custody since 18.07.2021, i.e., for about 4 Years and 2 Months. Investigation already stands completed and the chargesheet has been filed. The trial has progressed at a slow pace and out of 16 witnesses only 6 witnesses has been examined and one witness passed away, despite the long period of incarceration undergone by the applicant. Trial doesn't seem to be concluded in near future.

23. The submissions advanced by learned counsel appearing for the applicant that the recovery proceedings are vitiated in law and that there is no independent witness to the recovery are matters which would have to be considered at the stage of final adjudication of the case. However, having regard to the prolonged period of incarceration already undergone by the applicant, this Court is of the view that the applicant is entitled to be enlarged on regular bail.

24. It may also be noted that this Court had directed the learned Trial Court to submit a report regarding the stage of the trial. It has been informed that the trial is likely to take considerable time for its conclusion, having regard to the long pendency of cases before the Trial Court.

25. Though the delay in conclusion of the trial, to some extent, is attributable to the applicant, who did not surrender upon expiry of the period of interim bail, it is also pertinent to note that, thereafter, the applicant appears to have abided by the terms and conditions of the interim bail granted to him on 25.04.2026.

26. The fact that the applicant had, on an earlier occasion, failed to comply with the terms of surrender cannot, by itself, be the sole ground for



keeping him in continuous judicial custody.

27. Balancing the applicant's right to a speedy trial with the other relevant factors and the period of incarceration already undergone, this Court is of the view that it would be appropriate to release the applicant on regular bail, subject to such terms and conditions as may be imposed by the concerned Trial Court.

28. Nothing stated, hereinabove, shall be construed as an expression on the merits of the case. The observations made herein are confined solely to the adjudication of the present bail application. The Trial Court shall adjudicate the matter independently and in accordance with law, on the basis of the evidence adduced before it.

29. In light of these observations, the application stands disposed of.

30. Copy of the order to be forwarded to the concerned Jail Superintendent for necessary compliance

PURUSHAINdra KUMAR KAURAV, J
SEPTEMBER 3, 2026/p