

Bail Matters 3351/2024
STATE Vs. MAHENDER SHAH
FIR No. 190/2022
PS- (Sun Light Colony)
u/s 20/61/85 of NDPS Act

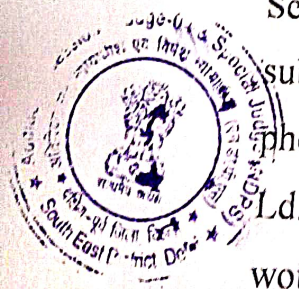
Dr. TARUN SAHRAWAT
ASJ-04/Special Judge (NDPS),
South-East District, Saket Courts
New Delhi

30.01.2025

File taken up today on an application under Section 483 of Bhartiya Nagrik Suraksha Sanhita, 2023, filed on behalf of the applicant/accused Mahender Shah for grant of regular bail.

Present : Sh. S. K. Kain, Ld. Addl. PP for the State.
Sh. Aditya Aggarwal and Ms. Manvi Gupta, Ld.
Counsel for the applicant/accused.
IO/SI Satnarayan is present.

1. Vide this order, I shall adjudicate upon the regular bail application filed on behalf of the applicant/accused Mahender Shah. Arguments were heard at length, the gist whereof is discussed hereunder.
2. Ld. Counsel for the applicant/accused submitted that the applicant/accused has been languishing in JC since 15.03.2022 and that he has been falsely implicated in the present matter as he has nothing to do with the alleged offences. Ld. Counsel further submitted that there is a non compliance of Section 52 A of NDPS Act in the matter. Ld. Counsel further submitted that during arrest and search of applicant/accused, no photography and videography was done at the place of incident. Ld. Counsel further submitted that the trial of the present case would take a long time to get concluded since out of the total 14 witnesses, only 3 witnesses have been cross-examined. Ld.



Counsel also submitted that the applicant/accused is more than of 65 years of age and also suffering with various old age ailment like paralysis and goitre and his condition is getting worse to worsen. Ld. Counsel thus, submitted that accused ought to be granted bail as he is ready to abide by all the terms and conditions imposed upon him while granting the bail. In support of his submissions, learned counsel placed reliance on the following judgments:

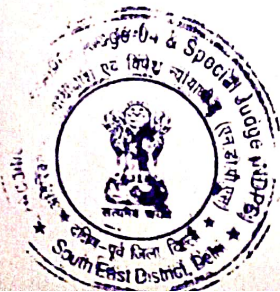
i). Sanjay vs. The State NCT of Delhi Bail Application No. 3710/2023 decided on 22.01.2025 by the Hon'ble High Court of Delhi.

ii). Rohan Malik vs. State Govt. of NCT of Delhi Bail Application No. 4303/2024 decided on 13.01.2025 by the Hon'ble High Court of Delhi.

iii). Seema vs. State of NCT of Delhi Bail Application No. 3391/2024 decided on 17.01.2025 by the Hon'ble High Court of Delhi.

iv). Sheela vs. State Govt. of NCT of Delhi Bail Application No. 4072/2024 decided on 20.01.2025 by the Hon'ble High Court of Delhi.

3. *Per contra* Ld. Addl. PP along with IO/SI Satnarayan vehemently opposed the bail application citing the gravity of the offences as one of the main grounds. Ld. Addl. PP further submitted that in the present matter, commercial quantity of the contraband has been recovered from the possession of the applicant/accused. Ld. Addl. PP further submitted that other prosecution witnesses are yet to be examined. Ld. Addl. PP

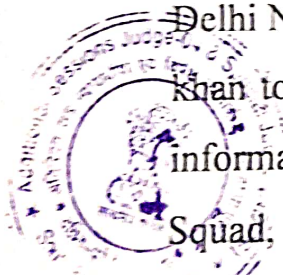


further submitted that there is possibility that accused may commit similar crime, if enlarged on bail. Ld. Addl. PP thus, submitted that accused ought not to be granted bail.

4. I heard the arguments addressed by the opposite parties and also perused the entire material available on record.

5. 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, the danger of the accused absconding or fleeing if released on bail; reasonable apprehension of the witnesses being threatened; etc. However, at the same time, period of incarceration is also a relevant factor that is to be considered.

6. Briefly stated the facts as reported by the IO that on 15.03.2022, SI Gaurav Chaudhary was present at Anti-Narcotic Squad, District South-East, New Delhi, wherein, one secret informer came and informed about a secret information that one person namely Mahender Shah, who is the resident of Bihar is involved in the illegal work of supplying cannabis (ganja) in Delhi NCR area and today he will come in the area of Sarai Kale Khan to supply Cannabis. SI Gaurav Chaudhary shared the said information with Inspr. Rakesh Sharma I/C Anti-Narcotics Squad, and ACP/Operation Sh. Manoj Kumar Sinha. SI Gaurav Chaudhary lodged a DD entry as per law u/s 42 NDPS Act. SI



Gaurav Chaudhary lodged the same in Daily Diary ANS/SE vide DD No.5 dt 15.03.2022. As per the direction of ACP/OPS, SI Gaurav Chaudhary constituted a raiding team comprising HC Satbir and Ct Pankaj and departed for the same. Where, on the instance of the secret informer, one person who was later identified as Mahender Shah s/o Babu Lal Shah and was apprehended by the raiding team, while he was dragging one plastic coloured bag and going toward Ashram Delhi. The above said person was found in possession of one white coloured plastic bag. Accordingly, ACP/OPS/SED Sh. Manoj Sinna was informed and he reached on the spot. Search of the apprehended person and white coloured bag recovered from his possession was conducted in the presence of ACP/OPS/SED and 27.990 kg of Ganja was recovered from the said plastic bag. Same was seized and sealed with the seal of GC and taken into police possession vide seizure memo. Accordingly, the present case was registered and further investigation was marked to ASI Surender Singh and investigation was taken up.

7. So far as the contention that the applicant/accused cannot be enlarged on bail unless the conditions laid down in Section 37 of NDPS Act are met. In this regard, it would be apposite to reproduce the relevant extracts/portion of **Union of India vs. Shiv Shanker Kesari: (2007) 7 SCC 798** of the Hon'ble Apex Court, wherein, it was observed as under:

"11. The court while considering the application for bail with reference to Section 37 of the Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the court is



called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty.

12. Additionally, the court has to record a finding that while on bail the accused is not likely to commit any offence and there should also exist some materials to come to such a conclusion."

8. Also, in case of **Mohd. Muslim v. State (NCT of Delhi) :2023 SCC OnLine SC 352**, the Hon'ble Apex Court has reiterated the law in regard to Section 37 of the NDPS Act as under:

"20. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act."

9.

Further, it would be relevant to apposite the relevant extract of **Sanjay (supra)**, wherein the Hon'ble High Court observed as under:

"46.As noted above, absence of independent witness may not vitiate the trial, however, it is open for the prosecution to explain

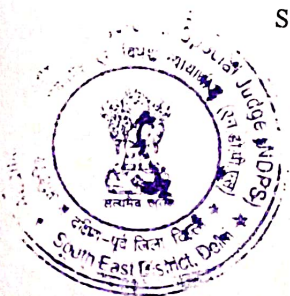


the said absence. With regard to whether prejudice has been caused to the petitioner herein, prima facie, I am of the view that, while considering the bail application, benefit must be extended to the petitioner as in the chargesheet, only, a bald averment is made that 4-5 passers-by were asked to join but they refused citing their justified compulsions. The said refusal must be recorded in writing and signed by such person which is not done in the present case. In addition, the chargesheet is also devoid of any averment that if any notice under section 100 (8) of CrPC was given to the passers-by and also no efforts were made to note down the details of such passers-by.

54. To grant bail in NDPS Act, the accused person has to cross the hurdle of twin conditions mentioned in section 37 of NDPS Act. Time and again, the Hon'ble Supreme Court in catena of judgments has laid down that the twin conditions can be relaxed provided the accused person has undergone substantial period of incarceration and the trial is unlikely to end in near future. In addition, the accused person has a right to speedy trial which flows from Article 21 of Constitution of India.”

10. Further, it would be pertinent to mention that the Hon'ble Supreme Court in **Man Mandal v. State of W.B., 2023 SCC OnLine SC 1868** granted bail to the petitioners on the ground that they had undergone almost 2 years and the trial is not likely to be concluded in near future. Also, in **Dheeraj Kumar Shukla v. State of V.P., 2023 SCC OnLine SC 918**, the Hon'ble Supreme Court dispensed the rigors of section 37 of NDPS Act and granted bail to the petitioner therein. Relevant para of the said judgment is extracted below:-

"3. It appears that some of the occupants of the 'Honda City' Car including Praveen Maurya @ Punect Maurya have since been released on regular bail. It is true that the quantity recovered from the petitioner is commercial in nature and the provisions of Section 37 of the Act may



ordinarily be attracted. However, in the absence of criminal antecedents and the fact that the petitioner is in custody for the last two and a half years, we are satisfied that the conditions of Section 37 of the Act can be dispensed with at this stage, more so when the trial is yet to commence though the charges have been framed."

11. Considering the aforementioned circumstances and taking into the fact that accused is in custody for almost 3 years, and that out of total 14 witnesses, only 3 witnesses have been cross-examined and the trial is likely to take a long time, I deem it fit to grant bail to accused Mahender Shah, on his furnishing personal bond with surety bond of Rs. 30,000/- with two sureties in the like amount each, subject to following conditions:

i) The applicant/accused shall not leave the country without the prior permission of the court;

ii). The applicant shall provide his permanent address to the court. The applicant shall intimate the court by way of an affidavit and to the IO regarding any change in the residential address;

iii) The applicant shall appear before the court as and when the matter is taken up for hearing;

iv) The applicant shall also furnish his mobile numbers and mobile numbers of his surety to the IO concerned, which shall be kept in a working condition at all times and shall not be switched off or changed without prior intimation to the IO concerned.

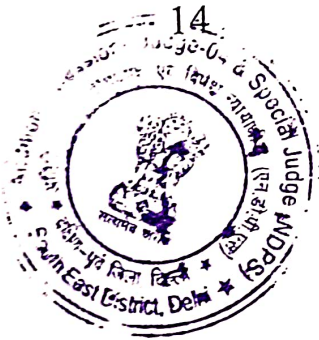
v) The applicant shall not communicate with or come in contact with any of the prosecution witnesses or tamper with the evidence of the case while being released on bail.



12. Needless to say, the above-mentioned observations are predicated solely on the facts as alleged, and brought forth at this juncture, and are not findings on merits, and would also have no bearing on the merits of the case. With these conditions, and observations, the regular bail application stands disposed of.

13. In compliance of **Sanjay Singh Vs. State (Govt of N.C.T of Delhi) Writ Petition Criminal 974/2022**, copy of this order be sent to concerned Jail Superintendent to convey the order to inmate.

Copy of this order be given dasti.



(Dr. TARUN SAHRAWAT)
ASJ-04 + Spl. Judge (NDPS),
South-East District, Saket Court,
New Delhi / 30.01.2025
Saket Court Complex, New Delhi