

IA No. 6/2025 in SC No. 107/2024
FIR No. 239/2023
PS Special Cell
State Vs. Bhalla Ram

23.08.2025

Present: Sh. K.D. Pachauri, Ld. Addl. PP for the State.
None for applicant/accused.

Vide my separate order of even date, the present application is dismissed and disposed off accordingly.

Copy of the order be given *dasti* as well as be sent to jail superintendent for supplying the same to accused in jail.

(Atul Ahlawat)
ASJ/Spl. Judge, NDPS/N. Delhi
23.08.2025

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ORDER

1. Vide this order, I shall dispose off the present application u/s. 483 BNSS, 2023 moved on behalf of accused / applicant for grant of regular bail. Reply filed by the IO and the same has been perused carefully.

2. It is submitted by Ld. Counsel for the applicant/accused that there is no other bail application preferred by the present applicant/accused which is pending disposal before the Hon'ble Supreme Court of India, before the Hon'ble High Court of Delhi, or any other Court in the present case FIR.

3. It is submitted by Ld. Counsel for applicant/accused that applicant/accused was arrested on 13.09.2023, after the name of the applicant/accused came up in the disclosure statements of the co-accused persons namely Bhana Ram and Amara Ram. As per the arrest memo prepared by the IO, his arrest is shown from the Railway Station, Jodhpur Junction. The arrest is shown from a busy place frequented by scores of general public, yet there is not even a single soul from the said public persons, who were made the witnesses of his arrest. The arrest memo is contradicted by the report u/s 57 of the Act, wherein his arrest is shown from a hospital. Therefore, the entire investigation is rendered

suspicious.

4. It is submitted by Ld. Counsel for applicant/accused that there has been complete non-compliance of the mandatory section 42 of the Act in the present case. The IO did not record any DD/GD entry in the roznamcha register, regarding the information received from the disclosure statements of the co-accused persons and regarding the arrest of the applicant/accused. The IO did not serve any notice to him u/s 67 of the Act and without informing the local police at Jodhpur, Rajasthan, he was illegally picked up and brought to Delhi. There was no entry recorded in the register of PS Special Cell regarding his arrest. The mandatory report u/s 57 of the Act was not prepared within the timeline provided under the Act. There is no specific DD entry as to who was informed of his arrest. Hence, the mandatory guidelines of '**Joginder Kumar Vs State of UP**', **AIR 1994 SC 1349** are not followed.

5. It is submitted by Ld. Counsel for applicant/accused that the arrest of the applicant/accused takes place on 13.09.2023, only on the basis of the disclosure statements of co-accused persons and he was taken to Delhi and produced before the Court of Ld. MM and his PC remand was obtained. Thereafter, he was taken back to Jodhpur, Rajasthan on 16.09.2023 and the alleged recoveries were affected from his house. The commercial quantity of the Opium is shown to have been recovered and there is no independent public witness of the said recovery. There are no video or photographs of the said seizure. The prosecution has not explained as to why no search was conducted at his house on

13.09.2023, i.e the day of his arrest and why he was taken back to Jodhpur, after expiry of 3 days.

6. It is submitted by Ld. Counsel for applicant/accused that the case property was deposited after a considerable delay in the Malkhana, as the same was duly reflected in GD No. 0073-A dated 16.09.2021, recorded at 19:38 hours. Furthermore, there has been a delay of 11 days in sending the samples to FSL after the proceeding u/s 52-A of the Act was conducted. The same has created strong suspicions of tampering with the alleged samples.

7. It is submitted by Ld. Counsel for applicant/accused that Furthermore, the mandatory notice u/s 50 of the Act was never supplied to the applicant/accused, prior to search and seizure. There has been a violation of section 52 of the Act and the article 22(1) of the Constitution, since the grounds of arrest which were supplied to the applicant/accused were defective and not satisfying the mandate of the law.

8. It is submitted by Ld. Counsel for applicant/accused that he is ready to abide with any condition that this court may impose upon him, if the present application is allowed and he is enlarged on regular bail.

9. Per contra, it is submitted by the Ld. Addl. PP duly assisted by the IO that upon the secret information received, the officers of Special Cell intercepted a Kia Seltos car at Mayur Vihar Phase-I Flyover at Noida Link Road, towards Akshardham. The said car was having temporary number plate in the front and no

number plate at the back. The car was occupied by co-accused Bhana Ram and Amara Ram. From the search conducted, the car was found having a secret cavity and from the said cavity near the fenders and inside the chasis line, 40 packets of opium were recovered. The total weight was 40.876 Kg. The co-accused persons upon interrogation revealed that they were involved in supplying the opium/*afeem* to different places for the last 6 months, at the instance of the applicant/accused. Their PC remand was obtained and the applicant/accused was arrested from Jodhpur, at the instance of the said co-accused persons. During the PC remand of applicant/accused 3.058 Kg opium was recovered from his house, at his instance. The car which was seized from the possession of co-accused persons was found to be registered in the name of applicant/accused. During the further investigation, one more Kia car, having temporary registration plates was seized from Guwahati Airport parking and it was also registered in the name of applicant/accused. The said car was also used by applicant/accused to obtain/ procure the opium from North Eastern states. He is the kingpin of the entire syndicate. The co-accused Amara Ram has moved an application to become an approver and his statement u/s 183 BNSS, 2023 is already recorded. There is recovery of commercial quantity of opium from him and furthermore there are allegations of section 29 of the Act. The rigors of section 37 shall fully apply. If he is released on bail at this stage, then he may abscond and flee away from the hands of justice. He would return back to his nefarious activities and would reactivate the illegal narco-network, endangering the lives of innocent persons. Therefore, the State is strongly opposing the present application.

10. After considering the rival contention of the parties, in light of the facts & circumstances of the present case, **Firstly**, since there is a recovery of commercial quantity of the contraband at the instance of the applicant/accused, from his house. The said recovery is duly videographed and it was conducted in the presence of the local police officer of Rajasthan Police. Therefore, the rigors of section 37 of the Act shall duly apply.; **Secondly**, there is no merit in the submissions of the non-compliance of section 42 and 57 of the Act. The applicant/accused was apprehended at the instance of the co-accused persons, while the co-accused persons were on police remand. He was apprehended from a hospital in Jodhpur, after the doctor's had discharged him. He was later arrested at the Jodhpur Junction Railway Station, after interrogation. There is a difference between apprehension and arrest and any discrepancy, as alleged on his behalf, between the arrest memo and the report u/s 57 is not going to the root of the matter and is a subject matter of trial.; **Thirdly**, the case of the prosecution is not of personal search of the applicant/accused being carried out. During his PC remand, he led the police officials to his house and from there, at his instance the contraband was recovered. There was no occasion of giving any notice u/s 50 of the Act in the facts of the present case.; **Fourthly**, he is the owner of the two cars recovered during the investigation, in which secret cavities were made. One car was recovered at his instance from Guwahati and other was intercepted at Delhi, when the co-accused persons were caught with the contraband hidden in the secret cavities; **Fifthly**, the FSL result has come out positive for opium and there is no undue

delay in the proceedings u/s 52-A of the Act. The recoveries were made on 16.09.2023 at Jodhpur and in the evening of same day, the case properties were deposited in the Malkhana. The application u/s 52-A was moved on very next day. **Siftly**, the application moved on behalf of co-accused seeking pardon is still pending adjudication and the statement of the said co-accused is already recorded u/s 183 BNSS, 2023. If released on bail, applicant/accused can try to influence the said co-accused person directly or indirectly. **Lastly**, The 3-Judge bench of the Hon'ble Supreme Court in “**NCB Vs Mohit Aggarwal**”, Criminal Appeal 1001-1002 of 2022, has duly held that mere continued incarceration in custody is not a relevant consideration under section 37 of the Act. Therefore, in the considered opinion of this Court, no ground for grant of regular bail is made out at this stage and this Court cannot give any definitive finding upon the twin conditions enshrined u/s 37 of the NDPS Act, 1985.

11. In view of the discussions in the preceding paragraphs, this Court is not inclined to grant regular bail to the applicant/accused at this stage. The present application stands disposed off accordingly.

12. Needless to say nothing expressed herein shall have any bearing on the merits of the case.

13. Application is disposed off accordingly.

14. The coversheet in compliance of the practice directions no. 124/Rules/DHC dated 10.12.2024, containing the directions

passed by the Hon'ble Supreme Court of India in "***Suhas Chakma Vs. Union of India & Ors.***", Neutral Citation 2024 INSC 813 is issued separately.

15. Copy of the order be given dasti as well as be sent to jail superintendent for supplying the same to accused in jail.

(Atul Ahlawat)
ASJ/Spl. Judge, NDPS/N. Delhi
23.08.2025