

IA7/25 SC 78/23
FIR 198/22
STATE v. WAHEEDULLAH
PS Crime Branch
U/s 21(c)/29 NDPS Act

09.03.2026

Present: Sh. A.B Asthana, Ld. Addl. PP for the State.
Sh. Vatan Tripathi, Ld. counsels for
applicant/accused.

Vide my separate order of even date, the application filed on behalf of the applicant/accused Waheedullah, seeking grant of regular bail, is dismissed and disposed of accordingly.

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

(Jitendra Pratap Singh)
ASJ NDPS Act
(Special Judge)/PHC
NDD/09.03.2026

**IN THE COURT OF JITENDRA PRATAP SINGH
ADDL. SESSIONS JUDGE /SPECIAL JUDGE (NDPS),
NEW DELHI DISTRICT, PATIALA HOUSE COURTS,
NEW DELHI**

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STATE v. WAHEEDULLAH

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ORDER

1. Vide this order, I shall decide the third regular bail application filed on behalf of the applicant/accused Waheedullah under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

2. It is submitted by Ld. Counsel for applicant/accused and affirmed by the IO 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. Brief facts of the case are as follows, on 02.09.2022, SI Imran Khan received secret information that one Afghan national namely Waheedullah, who was allegedly involved in dealing in narcotic substances in Delhi-NCR, would be coming near TERI Institute, Vasant Kunj Institutional Area, New Delhi, and that if a raid were conducted, a huge quantity of drugs could be recovered from him. The information was conveyed to senior officers and, pursuant to directions, a raiding team was constituted.

4. Thereafter, on the pointing out of the secret informer, the applicant/accused was apprehended and 3.005 kg heroin was allegedly recovered from his possession. On the basis of said recovery, the present FIR came to be registered. During police custody remand, the accused is stated to have made disclosure and, on his instance, a further recovery of 1.000 kg heroin was effected. Thus, as per prosecution, the total recovery in the present matter is 4.005 kg heroin, which is commercial quantity.

5. The samples drawn from the seized contraband were sent to FSL, Rohini, and as per the FSL result, the samples tested positive for heroin. The prosecution further asserts that during investigation, sufficient connecting material in the nature of CDR, CCTV footage, mobile data and bank statement has also come on record against the accused persons. After completion of investigation, charge-sheet was filed and charges under Sections 21(c)/29 NDPS Act were framed against the applicant/accused.

6. It is also a matter of record that the earlier bail applications moved on behalf of the applicant/accused have already been dismissed by this Court as well as by the Hon'ble High Court of Delhi.

7. It is submitted by the learned counsel for the applicant/accused that during the course of arguments, learned counsel for the applicant/accused has pressed the present bail application only on the grounds of prolonged custody, delay in trial, and the bleak possibility of the trial concluding in the near future.

8. It is submitted that the applicant has remained in judicial custody since 03.09.2022 and thus has undergone substantial incarceration as an undertrial. It is argued that there are 27 prosecution witnesses in all, out of whom only three witnesses have been examined so far, and even the testimony of PW-3 has not concluded inasmuch as his cross-examination is still pending. It is submitted that the examination of the remaining prosecution witnesses, followed by statement of accused under Section 313 Cr.P.C./corresponding provision and defence evidence, is likely to consume considerable time. On this basis, it is contended that continued incarceration of the applicant would be unjustified.

9. Learned counsel for the applicant has further relied upon the decision of the Hon'ble Supreme Court in Bharat Chaudhary v. Union of India, Petition for Special Leave to appeal (CRL.) No. 5703 of 2021 and connected matter decided on 13.12.2021. Reliance has also been placed upon Emeka Emmanuel v. State, Bail Application No. 1231/2022, decided by the Hon'ble High Court of Delhi on 18.11.2022. Learned counsel has also relied

upon Masoom Alam v. State NCT of Delhi, Bail Application No. 2969/2025, decided by Hon'ble High Court of Delhi on 10.10.2025. Reliance is also placed upon the order of the Hon'ble High Court of Delhi in Manpreet Singh Gill v. Narcotics Control Bureau & Anr., Bail Application No. 2202/2024, decided on 18.11.2024. Reliance is also placed on the decision dated 20.05.2024 of the Hon'ble High Court of Delhi in the Bail Application No. 2882/2023, titled 'Vineet v. State' and on the decision dated 05.01.2026 of the Hon'ble High Court of Delhi in Bail Application No. 3059/2025 titled 'Lakshay Jain v. State (GNCTD)'. In support of his arguments, Ld. Counsel has also referred the order dated 29.07.2025 of the Ld. Predecessor of this Court in IA No. 01/2024, FIR No. 228/2023, PS Crime Branch on the bail application of accused Shadab Bahaduri.

10. On the strength of the aforesaid decisions, it is argued that further custody of the applicant is not warranted and he deserves to be enlarged on bail.

11. Learned Additional Public Prosecutor for the State has vehemently opposed the bail application and submitted that the present case involves recovery of commercial quantity of heroin, and therefore the rigours of Section 37 of the NDPS Act squarely apply.

12. It is submitted that 3.005 kg heroin was recovered from the possession of the applicant and a further 1.000 kg heroin was recovered at his instance during police custody remand. The FSL result has confirmed that the recovered substance is heroin. It is further submitted that sufficient connecting material has been collected during investigation against the accused.

13. Learned Addl PP has further submitted that the earlier bail applications of the applicant have already been dismissed by this Court as well as by the Hon'ble High Court of Delhi. It is argued that, except for the further passage of time, no such change in circumstance has arisen as would warrant a different view. It is further argued that mere delay in trial or prolonged incarceration by itself is not a ground to grant bail in a case involving commercial quantity unless the twin conditions prescribed under Section 37 NDPS Act are satisfied.

14. It is therefore prayed that the present bail application be dismissed.

15. I have heard the learned counsel for the applicant/accused and the learned Additional Public Prosecutor for the State and have perused the record carefully.

16. The applicant is facing trial for offences punishable under Sections 21(c)/29 NDPS Act. The allegations against him are of

recovery of 4.005 kg heroin, which is admittedly commercial quantity. Thus, the bar contained in Section 37 of the NDPS Act gets attracted.

17. It is trite that in cases involving commercial quantity, the Court is required to satisfy itself that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. These are the mandatory twin conditions engrafted in Section 37 NDPS Act.

18. So far as the argument of the learned counsel for the applicant regarding prolonged custody and delay in trial is concerned, there can be no dispute with the proposition that speedy trial is an important constitutional guarantee and that a long period of undertrial incarceration is undoubtedly a relevant factor while considering a prayer for bail. In the present case, the applicant has remained in custody since 03.09.2022, and only a few prosecution witnesses have been examined till date. This circumstance has been duly considered.

19. However, the judgments relied upon by learned counsel for the applicant do not advance his case in the factual matrix of the present matter.

20. In Bharat Chaudhary (Supra), the Hon'ble Supreme Court

noticed, inter alia, that no contraband was recovered from accused A-4, there was lack of clarity regarding quantitative analysis, a large number of seized tablets were stated to be sex-enhancement medicines not covered by the NDPS Act, and the link sought to be established against the accused was found tenuous, being based substantially on Section 67 statements. In the present case, the factual position is materially different. Here, as per prosecution, there is direct recovery of 3.005 kg heroin from the possession of the applicant, followed by a further recovery of 1.000 kg heroin at his instance, and the FSL report has already opined that the substance is heroin. Thus, the uncertainty regarding nature and quantity of contraband, which weighed with the Hon'ble Supreme Court in *Bharat Chaudhary*, is absent here.

21. Similarly, in *Emeka Emmanuel v. State* (Supra), bail was granted because the Hon'ble Court found prima facie infirmity in the very "fountainhead" of the recovery on account of defective compliance of Section 50 NDPS Act. In the present matter, the bail application has not been pressed on the ground of any such glaring defect going to the root of the recovery. Rather, learned counsel for the applicant has consciously confined his submissions to further custody and delay in trial. Therefore, the said decision is clearly distinguishable.

22. Likewise, Masoom Alam v. State NCT of Delhi (Supra) turned on the fact that the applicant therein was implicated primarily on the basis of disclosure statement of co-accused, no recovery had been effected from him, chats did not explicitly refer to contraband, and the material on record was found prima facie insufficient to connect him with the recovered commercial quantity. In contradistinction, the present case is not one of mere disclosure-based implication. Here, there is a case of substantive recovery from the present applicant himself, followed by a further recovery at his instance. Thus, the factual foundation in Masoom Alam is wholly different and the said decision does not ensure to the benefit of the present applicant.

23. The same is true of Manpreet Singh Gill v. NCB & Anr. (Supra), wherein the Hon'ble High Court granted bail noticing that nothing incriminating had been recovered from the applicant, that the case against him rested essentially on disclosure statements of co-accused, and that the CCTV/CDR material did not prima facie establish actual delivery of contraband. The present matter stands on a different footing since, according to the prosecution case, the applicant was himself apprehended with 3.005 kg heroin and a further 1.000 kg heroin was recovered on his disclosure. Hence, the ratio of the aforesaid order is not attracted to the facts of the present case.

24. Learned counsel for the applicant has also relied upon the judgment of the Hon'ble High Court of Delhi in *Lakshay Jain* (Supra), to contend that prolonged incarceration and delay in trial constitute valid grounds for grant of bail even in cases arising under the NDPS Act.

25. However, the said decision is clearly distinguishable on facts and circumstances. In the case of *Lakshay Jain* (supra), the Hon'ble High Court granted bail primarily on the cumulative consideration of several factors. Firstly, no contraband was recovered from the personal possession of the applicant therein and the alleged recovery attributed to him was only 329.7 grams of cannabis/ganja, which was noted to be small quantity. Secondly, the Hon'ble Court found that most of the co-accused, including those from whom substantial quantities had allegedly been recovered, had already been enlarged on bail, thereby materially altering the position of parity. Thirdly, the role attributed to the applicant in that case was based largely on alleged financial transactions and tracking IDs found in his phone, which the Court observed would require examination during trial. Fourthly, the trial had not even commenced despite the lapse of considerable time and there were around 40 prosecution witnesses, making early conclusion of trial unlikely.

26. The facts of the present case stand on a substantially

different footing. In the present matter, the applicant is alleged to be in conscious possession of commercial quantity of contraband, and therefore the stringent conditions prescribed under Section 37 of the NDPS Act squarely apply. Unlike the case relied upon by the applicant, the prosecution case herein involves direct recovery of contraband, supported by the seizure proceedings and other material collected during investigation. Thus, the present case cannot be equated with a situation where the accused had no recovery from his possession and was implicated only on the basis of circumstantial linkage.

27. Additionally, the Hon'ble High Court in the said judgment had also considered medical grounds and prolonged interim bail granted to the applicant therein, which had been duly complied with without misuse of liberty. No such comparable circumstance has been shown to exist in the present matter.

28. Therefore, the judgment in Lakshay Jain (supra) turned upon its peculiar factual matrix, particularly the absence of recovery from the accused, parity with co-accused who had already been granted bail, and the stage of trial. The ratio of the said judgment cannot be mechanically applied to the present case where the allegations involve direct recovery of commercial quantity of narcotic substance and the statutory bar under Section 37 NDPS Act continues to operate.

29. Learned counsel for the applicant has also relied upon the order passed by the learned predecessor of this Court in State vs Shadab Bahaduri (Supra).

30. The said order too does not advance the case of the applicant. A perusal of the said order shows that bail was granted primarily because the Court found prima facie discrepancies in the identity of the seized contraband, particularly with respect to the difference in colour of the substance allegedly seized and the sample analysed by the FSL, which created uncertainty regarding the identity of the sample itself. The Court also noted certain peculiar circumstances including the missing report lodged by the wife of the accused and doubts raised about the recovery proceedings, which collectively persuaded the Court to conclude that the accused had been able to satisfy the rigours of Section 37 NDPS Act.

31. In the present case, however, no such material discrepancy regarding the identity of the seized contraband has been brought to the notice of this Court. The prosecution record does not reveal any such inconsistency between the seizure proceedings and the FSL report which would cast doubt upon the integrity of the samples at this stage.

32. Similarly, the contentions regarding alleged non-

compliance of Sections 42, 50 or 52 of the NDPS Act raised by the applicant are matters which are essentially questions of evidence to be tested during trial. At the stage of bail, unless such non-compliance is prima facie glaring and apparent from the record so as to demolish the prosecution case altogether, the same cannot be a ground to bypass the statutory embargo under Section 37 of the NDPS Act.

33. Thus, the order passed in Shadab Bahaduri (supra) was rendered in the backdrop of peculiar factual discrepancies and doubts regarding the recovery itself, which are not present in the case at hand. The said order, therefore, does not assist the applicant.

34. Thus, the authorities cited by learned counsel for the applicant are distinguishable on facts, as each of them turned either on absence of recovery from the accused, doubtful linkage with the contraband, serious uncertainty regarding the very applicability of the NDPS Act, or a foundational defect in the recovery proceedings. None of those features is available in the case at hand in the manner argued.

35. This Court is conscious that prolonged incarceration is a relevant consideration. At the same time, in a prosecution involving commercial quantity of heroin, the Court cannot

overlook the statutory mandate of Section 37 NDPS Act. At this stage, having regard to the nature of allegations, the recovery attributed to the applicant, the further recovery allegedly effected at his instance, and the FSL report, this Court is not in a position to record satisfaction that there are reasonable grounds for believing that the applicant is not guilty of the alleged offences. Similarly, no satisfaction can presently be recorded that he is not likely to commit any offence while on bail.

36. It is also pertinent that the earlier bail applications of the applicant have already been dismissed by this Court as well as by the Hon'ble High Court of Delhi. The fresh circumstance pointed out is essentially the further period of custody and the pace of trial. Though the said circumstance has been considered, in the facts of the present case, the same is not sufficient to dilute the statutory embargo contained in Section 37 NDPS Act.

37. In view of the aforesaid discussion, I am of the considered opinion that the applicant/accused is not entitled to the concession of bail at this stage.

38. Accordingly, the present bail application stands dismissed.

39. However, considering the period of custody already undergone by the applicant, the prosecution is directed to remain vigilant in securing the presence of its witnesses so that the trial

may proceed expeditiously.

40. Nothing expressed herein shall have any bearing on the merits of the case.

41. 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.

42. Copy of the present order be given *dasti* and same be also sent to concerned jail superintendent, to be supplied to the applicant/accused.

(Jitendra Pratap Singh)
ASJ NDPS Act
(Special Judge)/PHC
NDD/09.03.2026