

**IA 8-26 SC 78-2023**  
**FIR No. 198/2022**  
**PS: Crime Branch**  
**State Versus Mustafa Stanikzai**

**08.06.2026**

Present: Sh. A.B Asthana, Ld. Addl. PP for the State.  
Sh. Pratyush Prasanna, Ld. counsel for  
applicant/accused.

Vide my separate order of even date, the application filed on behalf of the applicant/accused Mustafa Stanikzai, 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/08.06.2026**

**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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**ORDER**

1. By this order, I shall dispose of the application filed on behalf of accused Mustafa Stanikzai under Section 483 BNSS, 2023, corresponding to Section 439 Cr.P.C., read with Section 37 of the NDPS Act, seeking regular bail in the present case.

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. Briefly stated, the case of the prosecution is that on 02.09.2022, SI Imran Khan received secret information from Gujarat ATS that one Afghan national namely Waheedullah, son of Rahimullah, was involved in dealing in narcotic substances in Delhi-NCR area and would be coming near TERI Institute, Vasant Kunj Institutional Area, New Delhi. The information was reduced into writing under Section 42 of the NDPS Act and after intimation to senior officers, a raiding team was constituted.

4. It is alleged that at about 11:30 PM, on the pointing out of the secret informer, accused Waheedullah was apprehended near TERI Institute. He was served with notice under Section 50 NDPS Act and thereafter, on search, 3.005 kg heroin was allegedly recovered from his possession. FIR was accordingly registered. During police custody remand of accused Waheedullah, further recovery of 1 kg heroin was allegedly effected at his instance. As per the prosecution, the FSL result confirmed the substance to be heroin.

5. The present applicant Mustafa Stanikzai was not apprehended from the spot and no contraband was recovered from his person or residence. However, during investigation, accused Waheedullah disclosed that his father Rahimullah and his father's friend Mustafa were the kingpins of the syndicate and that he used to work on their instructions. It is further alleged that Waheedullah disclosed that before leaving for Lucknow, Rahimullah and Mustafa had handed over about 8 kg heroin to him, out of which 4 kg was supplied to another person and the remaining quantity formed part of the recovery in the present case.

6. It is further the case of the prosecution that the disclosure of accused Waheedullah is not the only material against the present applicant. According to the State, CDRs of mobile numbers allegedly used by Waheedullah, Rahimullah and Mustafa were collected. The CDR analysis allegedly shows that the applicant was in contact with Waheedullah and Rahimullah,

that on 13.08.2022 he communicated with Waheedullah, met him near Mahamaya Park, Noida and thereafter went to Paharganj, Delhi, and that on 01/02.09.2022 he was in Lucknow.

7. The prosecution has further relied upon CCTV footage and hotel record of Hotel Harsha International, Paharganj. As per the prosecution, accused Waheedullah had disclosed that on 13.08.2022, on the instructions of Rahimullah, he along with Mustafa went to the said hotel and Mustafa collected shampoo bottles containing heroin from one Iranian national, namely Mohammad Tabanian Nasab. The prosecution claims that during investigation, CCTV footage and visitor details of the hotel were collected and the footage shows that on 13.08.2022 at about 9:00 PM, Mustafa visited the hotel, met the said Iranian national and collected one black polythene from him.

8. The State has also relied upon mobile phone/FSL data of accused Waheedullah. It is alleged that photographs of shampoo bottles being weighed on an electronic weighing machine were found in the mobile phone. The bottles were allegedly numbered 1 to 12. It is the prosecution case that these photographs corroborate the disclosure that heroin had been received in shampoo bottles from Hotel Harsha International. WhatsApp material between Waheedullah and Rahimullah has also been relied upon to show that on 31.08.2022, the photograph of a person later identified as Mukhtiar Singh @ Babbu was sent to Waheedullah and that Waheedullah sent a photograph of 4 kg heroin on weighing machine. The prosecution has also relied

upon the statement of a witness to show that Mukhtiar Singh @ Babbu met Waheedullah at Alfa-1 Market, Greater Noida and received heroin.

9. The prosecution has further alleged that the bank statement of accused Rahimullah showed cash deposits of about Rs. 8-9 lakhs between May, 2022 and August, 2022. It is also stated that Rahimullah and Mustafa were in Lucknow on 01/02.09.2022 and were arrested on 03.09.2022 in another case registered by Special Cell, Delhi with huge quantity of contraband.

10. Learned counsel for the applicant has submitted that the applicant has been falsely implicated. It is argued that there is no recovery of any contraband from the applicant, either from his person or from his residence. It is submitted that the main recovery was allegedly effected from co-accused Waheedullah and the applicant has been roped in only on the basis of disclosure statements of co-accused persons.

11. It is argued that disclosure statements made by co-accused persons while in custody are inadmissible in view of the law laid down in '*Tofan Singh v. State of Tamil Nadu*', (2021) 4 SCC 1. It is submitted that when the prosecution case against the applicant is essentially founded on such disclosure, the applicant cannot be kept in custody indefinitely.

12. It is further argued that several persons named in the alleged disclosures, including the Iranian national, the Nigerian

national, one Sardarji, Babbu and others, have either not been apprehended or not properly investigated. This shows that the investigation is incomplete and doubtful. It is also submitted that the prosecution has failed to establish that any article allegedly collected by Mustafa from Hotel Harsha International was in fact narcotic substance, as no such substance was recovered from the applicant.

13. Learned counsel has further submitted that there is no independent public witness to the alleged recoveries and no proper videography or photography of proceedings was conducted. It is argued that non-compliance with safeguards in NDPS cases creates serious doubt about the prosecution story. It is further argued that no CCTV footage connecting the applicant with the alleged recovery has been filed from the place of recovery and no financial trail against the applicant has been established.

14. It is also submitted that another Afghan national, namely Nisar Ahmad, who was similarly named in disclosure, was discharged for want of incriminating material. It is argued that the applicant is similarly situated and deserves the benefit of parity.

15. Learned counsel has placed heavy reliance on the custody period. It is argued that the applicant has remained in judicial custody for more than three and a half years and only 3 out of 27 witnesses have been examined. The trial is likely to take

considerable time and continued incarceration would amount to punishment before conviction, in violation of Article 21 of the Constitution of India.

16. Learned counsel has relied upon *Abdul Rab v. NCB*, 2025:DHC:422, *Bharat Chaudhary v. Union of India* (2021) 9 SCR 551, *Mohd. Bilal v. State of NCT of Delhi* 2024:DHC:3006, *State by NCB v. Pallulabid Ahamad Arimutta* (2022) 1 SCR 422 and *Prabhakar Tewari v. State of U.P.*, MANU/SC/0085/2020 to submit that where there is no recovery from the accused, where the prosecution relies upon disclosure/CDR and where the accused has undergone long custody, bail should be granted.

17. Per contra, learned Addl. PP for the State, assisted by the IO, has opposed the application. It is submitted that the present case involves commercial quantity of heroin and therefore, the rigours of Section 37 NDPS Act are attracted.

18. It is submitted that the applicant is not a person against whom there is only a disclosure statement. According to the State, the disclosure of Waheedullah led to collection of independent and corroborative material in the form of CDRs, location analysis, CCTV footage, hotel records, mobile phone/FSL data, WhatsApp material and other circumstances. It is submitted that the applicant and Rahimullah were the principal persons who had handed over heroin to Waheedullah and the recovery in the present case is part of the same consignment.

19. Learned Addl. PP has argued that CDRs show that Mustafa was in contact with Waheedullah and Rahimullah and that on 13.08.2022, Mustafa and Waheedullah were together in the area of Mahamaya Park/Noida and thereafter Paharganj. It is further submitted that CCTV footage of Hotel Harsha International shows Mustafa collecting a black polythene from an Iranian national, which corroborates the version of Waheedullah that shampoo bottles containing heroin were collected from that hotel.

20. It is further submitted that the mobile phone of Waheedullah contained photographs of shampoo bottles containing heroin being weighed and WhatsApp material regarding delivery of 4 kg heroin to Babbu. It is submitted that these circumstances, when read together, clearly show the role of the present applicant in the conspiracy.

21. It is further argued that absence of recovery from the person of the applicant is not decisive when he is charged for conspiracy under Section 29 of the NDPS Act. Learned Addl. PP has submitted that the Court, at the stage of bail, is not required to conduct a mini trial. It is enough that the material collected during investigation discloses a strong prima facie case. Since the twin conditions of Section 37 NDPS Act are not satisfied, the application is liable to be dismissed.

22. I have heard the rival submissions and have perused the record.

23. The quantity involved in the present case is commercial quantity. Therefore, the application has to be considered in the light of Section 37 of the NDPS Act. In a case involving commercial quantity, bail cannot be granted merely on the ordinary parameters under Section 439 Cr.P.C./Section 483 BNSS. The Court must be satisfied that there are reasonable grounds for believing that the accused is not guilty of the offence and that he is not likely to commit any offence while on bail. These conditions are cumulative and mandatory.

24. It is true that no contraband has been recovered from the person or residence of the present applicant. It is also true that the initial recovery was from co-accused Waheedullah. However, the applicant is not charged merely for personal possession. The allegation against him is of being a part of a larger conspiracy for trafficking of heroin. In cases of conspiracy under Section 29 of the NDPS Act, the absence of direct personal recovery is not by itself sufficient to hold that the accused is not guilty, if other material shows his role in the procurement, delivery, movement or distribution of contraband.

25. The main question, therefore, is whether the material against the applicant is only the disclosure statement of co-accused Waheedullah or whether there is some further connecting material. At this stage, the record as referred to in the reply shows that the State is relying upon several circumstances, namely:

(i) disclosure of Waheedullah regarding handing over of heroin

by Mustafa and Rahimullah;

(ii) CDRs showing communication between Mustafa, Waheedullah and Rahimullah;

(iii) location/communication material allegedly showing Mustafa with Waheedullah on 13.08.2022 in connection with the visit to Paharganj;

(iv) CCTV footage and hotel record of Hotel Harsha International allegedly showing Mustafa collecting a black polythene from the Iranian national;

(v) mobile/FSL data showing photographs of shampoo bottles allegedly containing heroin being weighed;

(vi) WhatsApp material relating to delivery of 4 kg heroin to Babbu;

(vii) statement of witness regarding Babbu meeting Waheedullah at Alfa-1 Market, Greater Noida;

(viii) alleged presence of Mustafa and Rahimullah in Lucknow on 01/02.09.2022; and

(ix) cash deposits in the bank account of Rahimullah during the relevant period.

26. At the stage of bail, this Court is not required to finally test the evidentiary value of each of these circumstances. The Court is also not required to record a finding of guilt. However, for the purpose of Section 37 NDPS Act, the Court must see whether reasonable grounds exist for believing that the applicant is not guilty. On the present material, such satisfaction cannot be recorded.

27. The contention that the applicant has been implicated only on the basis of disclosure statement is, therefore, not acceptable at this stage. The disclosure may have been the starting point, but the prosecution claims to have collected further corroborative material in the form of CDRs, CCTV footage, hotel record, mobile data and WhatsApp material. Whether this material is ultimately proved in accordance with law is a matter of trial. At the stage of bail, its existence cannot be brushed aside.

28. The reliance on *Tofan Singh (Supra)* is also not sufficient to grant bail in the facts of the present case. There can be no dispute with the proposition that a confessional statement recorded under Section 67 NDPS Act is not admissible as a confession in the trial. However, the present case is not one where the prosecution relies only on a Section 67 statement or disclosure. The prosecution has placed on record other circumstances which, if proved, would connect the applicant with the alleged conspiracy. Therefore, the bar under Section 37 is not diluted merely because one part of the prosecution case is based on disclosure.

29. The defence has also argued that there is no proof that the black polythene allegedly collected by Mustafa from the hotel contained heroin. This is a matter which will require appreciation of evidence at trial. At the bail stage, the Court has to consider the overall chain projected by the prosecution. The alleged hotel CCTV footage, the disclosure regarding shampoo bottles, the photographs of such bottles being weighed, the WhatsApp

material and the subsequent recovery from Waheedullah are circumstances which, taken together, cannot be ignored at this stage.

30. The arguments regarding non-joining of public witnesses, non-videography, alleged defect regarding seal, non-arrest of some other suspects and non-production of certain CCTV footage are also matters which may be urged during trial. These are not, at this stage, sufficient to hold that the applicant is not guilty. In NDPS matters involving commercial quantity, such issues have to be examined with the evidence of the recovery witnesses and other material witnesses. It would not be proper to return a finding of infirmity at this stage without the evidence being tested.

31. The applicant has also claimed parity with Nisar Ahmad. This argument does not persuade the Court at this stage. Parity is not a mechanical concept. The role, material and circumstances qua each accused have to be examined separately. The State has referred to CDRs, CCTV footage, hotel record and mobile/FSL data specifically qua the present applicant. Therefore, merely because another person was discharged or not proceeded against, the applicant cannot claim bail as a matter of parity.

32. In *Abdul Rab (Supra)*, bail was granted substantially on the ground of prolonged custody and slow trial. In that case, the allegation against the applicant was that he had facilitated transport of containers containing substance used for making

heroin. The Hon'ble Court also noticed that only one out of 33 witnesses had been examined and that the applicant had already been granted bail in a connected case. The facts of the present case are materially different. Here, the prosecution attributes a more direct role to the applicant in the chain of delivery of heroin to Waheedullah, and relies upon CCTV footage of the hotel visit, CDR/location, mobile/FSL data and WhatsApp material. Thus, the applicant cannot derive automatic benefit from *Abdul Rab*.

33. In *Bharat Chaudhary (Supra)*, the Hon'ble Supreme Court found that there was no recovery from the said accused, the scientific report in respect of electronic devices was awaited, and there was no clarity regarding quantitative analysis so as to establish commercial quantity qua the accused at that stage. The Hon'ble Court also noticed that reliance on WhatsApp printouts was not sufficient when the scientific report of the devices was awaited. In the present case, the substance recovered in the main case has already been found to be heroin as per FSL report and the quantity is commercial. Further, the prosecution does not rely merely on WhatsApp printouts or Section 67 statement, but also on CDRs, CCTV footage, hotel record and mobile/FSL data. Hence, the factual foundation of *Bharat Chaudhary* is not available to the present applicant.

34. In *Mohd. Bilal (Supra)*, the case was under the IPC and not under the NDPS Act. The statutory embargo of Section 37 NDPS Act was not involved. The Hon'ble Court granted bail also considering that the alleged main accused and several co-accused

had already been granted bail and the petitioner's role was considered subsidiary. The said decision cannot be applied in the present case, where commercial quantity of heroin is involved and the Court must first satisfy the twin conditions of Section 37 NDPS Act. Further, the prosecution alleges that the present applicant was one of the principal conspirators and not a person with a merely subsidiary role.

35. In *Pallulabid Ahamad Arimutta (Supra)*, the Hon'ble Supreme Court declined to interfere with grant of bail in respect of those accused against whom the prosecution material was essentially Section 67 statements and CDRs, and no substantial material was available at the time of arrest. However, the same judgment also cancelled bail of one accused from whose rented premises substantial commercial quantity was recovered and held that such accused could not claim parity. The judgment, therefore, does not lay down that bail must be granted in every case where there is no personal recovery. It only shows that the Court must examine the nature of material qua each accused. In the present case, the prosecution relies not merely on Section 67 disclosure and CDRs, but also on CCTV footage, hotel record, mobile/FSL data and WhatsApp material. Hence, the said judgment is distinguishable.

36. In *Prabhakar Tewari (Supra)*, the Hon'ble Supreme Court was considering interference with an order granting bail in an IPC offence. It was observed that seriousness of offence and criminal antecedents by themselves may not be sufficient to

cancel bail if the High Court has exercised discretion properly. The said decision does not deal with Section 37 NDPS Act. In the present case, the question is not of cancellation of bail already granted by a superior court but of grant of bail at the first instance in a case involving commercial quantity of heroin. The statutory restrictions under Section 37 NDPS Act make the present case materially different.

37. Thus, none of the judgments relied upon by the applicant, on their own facts, compel grant of bail in the present case. The broad principles regarding personal liberty, delay in trial and inadmissibility of Section 67 confession are well settled. However, those principles have to be applied to the facts of each case and subject to the statutory mandate of Section 37 NDPS Act.

38. In view of the above-mentioned discussion, at this stage, this Court is unable to record satisfaction that there are reasonable grounds for believing that the applicant is not guilty of the offence alleged. Further, considering the nature of allegations, the alleged international links, the role attributed to the applicant and the seriousness of the offence, this Court is also unable to record satisfaction that the applicant is not likely to commit any offence while on bail. The twin conditions of Section 37 NDPS Act are therefore not satisfied.

39. Accordingly, this Court is of the considered view that the applicant has failed to make out a case for grant of regular bail.

The application for regular bail filed on behalf of accused Mustafa Stanikzai is dismissed.

40. Nothing stated herein shall be construed as an expression on the merits of the case. The observations made herein are only for the purpose of deciding the present bail application.

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. The application stands disposed of accordingly. 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/08.06.2026**