

IA No. 4/25 SC 167/25

FIR No. 4/25

PS Special Cell

State Vs. Kailash

02.02.2026

Present: Sh. A. B. Asthana, Ld. Addl. PP for the State.

None for applicant/accused.

Vide my separate order of even date, the present application 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.

(Atul Ahlawat)

ASJ/Spl. Judge, NDPS/N Delhi

02.02.2026

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

IA No. 4/25 SC 167/25

FIR No. 4/25

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State Vs. Kailash

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ORDER

1. Vide this order, I shall dispose of the bail application u/s. 483 BNSS, 2023 moved on behalf of accused/applicant Kailash for grant of regular bail. Reply filed by the IO.

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, in which similar relief has been sought.

3. It is submitted by Ld. Counsel for applicant/accused that applicant/accused was arrested on 01.01.2025 on the basis of secret information allegedly received at the office of PS Special Cell on 31.12.2024. The case of the prosecution is that the

applicant/accused alongwith co-accused Ajay @ Hanuman, who were both resident of Jodhpur, Rajasthan were coming from Rajasthan to Delhi for supply of opium to their contact namely Mahipal. It was further alleged that both the individuals would be coming at Sarai Kale Khan ISBT between 8 to 9 PM on the same day.

4. It is submitted by Ld. Counsel for the applicant/accused that from the bag of the co-accused Ajay @ Hanuman, recovery of 2.994 KG of opium was allegedly affected and from the bag of applicant/accused 3.300 KG opium was recovered. The last bail application moved by the applicant/accused on the ground of default bail was dismissed vide order dated 25.07.2025, since the chargesheet was duly filed on 21.06.2025, that is on the 172nd day of the arrest and 171st day of the remand order being passed. Till date there is no other application moved by the applicant/accused, which has been dismissed on merits.

5. It is submitted by Ld. Counsel for the applicant/accused that the alleged recoveries in the present case are planted upon the applicant/accused and the co-accused. Except for the disclosure statements, there are no other incriminating material to substantiate the case of the prosecution. The prosecution's version of events is not worthy of inspiring any confidence, since

there has been unreasonable and unexplained inordinate delay of over 9 hours in registration of the FIR, since the rukka was allegedly sent at 11:45 PM on 31.12.2024, however, the FIR was ultimately registered on 01.01.2025 at 08:38 AM.

6. It is submitted by Ld. Counsel for the applicant/accused that the chargesheet filed by the investigating agency is incomplete, since same is not accompanied with the FSL result. Therefore, the applicant/accused is entitled to grant of bail on this ground itself.

7. It is submitted by Ld. Counsel for the applicant/accused that there has been inordinate delay in compliance of Section 55 of the NDPS Act, since the recoveries were allegedly affected on 31.12.2024, however, the compliance by the SHO concerned was done on the next day at 09:00 AM.

8. It is submitted by Ld. Counsel for the applicant/accused that the seizing IO did not prepare the test memo and the facsimile seal was not affixed on the recovery memo and there is no mention on the facsimile seal in the malkhana register.

9. It is submitted by Ld. Counsel for the applicant/accused that there is no money trail unearthed during the investigation.

There are no CDRs, messages, etc. to substantiate the allegations leveled in the chargesheet.

10. It is submitted by Ld. Counsel for the applicant/accused that the grounds of arrest were prepared in English, while the applicant/accused is not conversant in English. Furthermore, the grounds of arrest were not supplied to the family members of the accused.

11. It is submitted by Ld. Counsel for the applicant/accused that the chain of custody of the contraband allegedly recovered in the present case is broken, since the name and signature of the depositing officer is not mentioned in the malkhana register. The Form – 3 of the NDPS Rules 2022 is not followed, since the facsimile seals was not affixed on the samples. Since the mandatory procedure is not followed, in all probability, in the future applicant/accused may be acquitted. Therefore, the benefit of the same for the purposes of satisfying the conditions u/s 37 of the Act be also given to the applicant/accused. The Ld. Counsel has placed the reliance on the decision of Hon'ble Supreme Court of India in '**Amarsingh Ramjibhai Barot Vs. State of Gujarat**', (2005) 7 SCC 550 and the decision of Hon'ble High Court of Delhi in "**Mohd. Ramjan Vs. State (NCT of Delhi)**", 2005 SCC OnLine Del 512 and the decision of Hon'ble High

Court of Jammu & Kashmir and Ladakh at Jammu, in “**Abdul Hamid Vs. Union Territory of J&K & Anr.**”, Bail Application no. 261/2024, date of decision 07.04.2025.

12. It is submitted by Ld. Counsel for the applicant/accused that the recovery of the contraband in the present case is marginally above the thresh hold of commercial quantity, therefore, it warrants scrutiny at the trial stage to determine whether the quantity was actually commercial or intermediate. Therefore, the rigours of Section 37 of NDPS Act shall not apply to the present case. The Ld. Counsel has placed the reliance of decision of Hon’ble High Court of Delhi in “**Vinay Sharma Vs. State Govt. of NCT of Delhi**”, 2025 SCC OnLine, Del 5137.

13. Per contra, it is submitted by the Ld. Addl. PP for the State that there are multiple recoveries of commercial quantity of the contraband from both the accused persons in the present case. From the possession of the co-accused Ajay @ Hanuman, 2.994 KG of Opium was recovered and from applicant/accused 3.300 KG Opium was recovered. The FSL result have come out positive for ‘*opium containing morphine*’, which was filed through supplementary chargesheet on 12.11.2025. All the mandatory compliances were duly done in the present case. Upon the disclosure statement of the applicant/accused and co-accused,

co-accused Anada Ram was arrested on 02.01.2025 and 8.150 kg of opium was recovered. On the basis of the supplementary disclosure statement of applicant/accused, co-accused Vinod Yadav was arrested on 10.01.2025 alongwith 16.252 KG of opium. Thereafter, on the disclosure statement of co-accused Vinod Yadav, other accused person involved in the conspiracy was also arrested. The rigors of Section 37 are fully applicable in the present case.

14. As far as the contention of the applicant/accused that the charge-sheet was incomplete, since the FSL result was not filed alongwith the charge-sheet, there is no merit in the said submissions. Since it has been categorically held by the Hon'ble High Court of Delhi that the charge-sheet is a complete charge-sheet, even though the FSL result is not filed alongwith and on the basis of said chargesheet, cognizance can be taken. Reliance is placed on the decision of the Division Bench of Hon'ble High Court of Delhi ***“Rahimullah Rahimi Vs. State of NCT of Delhi”***, CrI. Rev. Petition 163/2024, date of decision 08.08.2025, Neutral Citation:2025:DHC:6918-DB. Furthermore, the FSL result has been filed through supplementary charge-sheet and it has already come out positive for '*opium containing morphine*'.

15. As far as the allegations of non-compliance or delay in compliance of Section 55 of the Act and delay in registration of the FIR is concerned, same is a matter of trial and cannot be considered at this stage.

16. As far as the non-compliance of Section 52A of the Act and the NDPS Rules 2022 is concerned, same is also not a factor to be considered at this stage for the grant of bail. Reliance is placed upon the decision of the Hon'ble Apex Court in **"NCB Vs Kashif"**, 2024 SCC OnLine SC 3848. In **"Khet Singh Vs UOI"** (2002) 4 SCC 380, the Hon'ble Supreme Court had held that in certain circumstances, the investigating agency may not be able to follow the guidelines to the letter, and due to such procedural irregularity, the other evidence collected will not become inadmissible and the Trial Court has to consider all the circumstances and find out whether any serious prejudice is caused to the accused or not. Reliance is also placed upon **"State of Punjab Vs Makhan Chand"**, (2004) 3 SCC 453.

17. Section 52-A (4) created a deeming fiction wherein it creates a new form of primary evidence. However, it does not imply that the other evidence is original is excluded as primary evidence. In absence of compliance of the section 52-A of the Act, the Court cannot simply overlook other cogent evidence in

the form of seized substance itself and the testimonies of the witnesses examined. Reliance is placed upon the decision of Hon'ble Apex Court in ***“Bharat Aambale Vs. The State of Chhattisgarh”***, Criminal Appeal No. 250/2025 dated 06.01.2025, Neutral Citation, 2025 INSC 78.

18. The reliance placed by the Ld. Counsel on the decision of Hon'ble Supreme Court of India in ***Amarsingh Ramjibhai Barot (Supra)*** is highly misplaced, since the question involved there in was applicability of Section 18 or 21, since the recovered substance therein was 'opium derivative' and in the present case the FSL result has clearly come out positive for opium containing morphine.

19. The reliance placed by the Ld. Counsel on the decision of Hon'ble High Court of Delhi in ***Vinay Sharma (Supra)*** is also highly misplaced, since the Ld. Counsel has relied upon the submissions of the Ld. Counsel before the Hon'ble High Court of Delhi in the said case and no such finding was given by Hon'ble High Court of Delhi in that case that if the alleged recovery is only marginally above the thresh hold of commercial quantity, then the rigours of Section 37 would not apply. The Hon'ble High Court of Delhi in the said case had granted bail only on the

ground of delay in the progress of trial, which is not there in the present case.

20. The reliance placed by the Ld. Counsel on the decision of Hon'ble High Court of Delhi in ***Mohd. Ramjan (Supra)*** is also misplaced, since in that case, there was material discrepancy in the weight of the samples sent for forensic examination and the weight of the samples indicated in the FSL report, which is not the case in the present matter.

21. The reliance placed by the Ld. Counsel on the decision of Hon'ble High Court of J&K and Ladakh in ***Abdul Hamid (Supra)*** is also highly misplaced. The ratio of the said case is not applicable to the facts of the present case, since the said case pertained to intermediate quantity of the contraband, which is not the case at hand.

22. In the present case, not only there is recovery of commercial quantity of the contraband from the applicant/accused, there is further recovery of commercial quantity of contraband from co-accused, who was arrested at the same time on the basis of the secret information. Thereafter, upon the disclosure statement of the applicant/accused, further multiple arrests and recoveries of commercial quantity of the

contraband were affected and it led to busting the entire illegal drugs syndicate. The period of custody undergone is not a ground to be considered u/s 37 of the NDPS Act. Reliance is placed upon the decision of Hon'ble Supreme Court of India in “**NCB Vs. Mohit Aggarwal**”, MANU/SC/0899/2022. Furthermore, in light of statutory presumptions and the stringent condition imposed u/s 37 of the NDPS Act, no ground for grant of regular bail is made out.

23. In addition to the recovery of commercial quantity of the contraband from the possession of the applicant/accused, the same was confirmed to be opium containing morphine as per the FSL result filed through the supplementary chargsheet. The trial is yet to begin and the material witnesses are yet to be examined. There is no ground made out by the applicant/accused for this Court to give a finding at this stage that there are reasonable grounds for believing that he is not guilty of the offences in question or that he is not likely to commit any offence while on bail.

24. 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 of accordingly.

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

26. Application is disposed of accordingly.

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

(Atul Ahlawat)
ASJ/Spl. Judge, NDPS/N Delhi
02.02.2026