

**IA No. 29/25 in SC No. 385/2023**  
**Crime No. VIII/16/DZU/2023**  
**NCB Vs. Naveen Fogat**

26.09.2025

Present: Sh. Harssh, Ld. Proxy counsel for Sh. Arun Khatri,  
Ld. SPP for NCB.  
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**  
**26.09.2025**

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**NCB Vs. Naveen Fogat**

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**ORDER**

1. Vide this order, I shall dispose of the 2<sup>nd</sup> bail application u/s. 483, BNSS, 2023, moved on behalf of applicant/accused Naveen Fogat 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 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 Counsel for applicant/accused that the first application moved by the applicant/accused was dismissed as withdrawn and till date no bail application has been dismissed on merits. The applicant/accused has been falsely implicated in the present case and no recovery of the contraband took place from his possession or at his instance.

4. It is submitted by Ld. Counsel for applicant/accused that applicant/accused is in custody since 19.07.2023. The present applicant/accused's involvement allegedly came in the disclosure statement of co-accused Avtar Singh, which was allegedly recorded on 20.07.2023. There is inherent flaw in the case of the NCB, since the disclosure statement of co-accused Avtar Singh

was recorded on 20.07.2023, then how come the notice u/s 67 of the NDPS Act was issued to the applicant/accused on 19.07.2023 itself. Furthermore, even the receipt of the said notice is shown for the same date and his alleged disclosure statement was also recorded on 20.07.2023. The NCB is relying upon their malkhana register, wherein at godown entry no. 956, recorded by JIO Harender Kumar Dagar, it is duly reflected that the applicant/accused was arrested on 19.04.2023 itself and not on 20.07.2023, i.e. the date mentioned on his arrest memo.

5. It is submitted by Ld. Counsel for applicant/accused that the applicant/accused was picked up from his house situated at Faridabad between 12:00 to 02:00 PM on 19.07.2023 and thereafter he was brought to the office of NCB situated at R. K. Puram. The said fact is corroborated by the Cell Location ID Chart of his mobile phone, which is reflecting his location at R. K. Puram during the intervening night of 19/20.07.2023. The said location ID Chart alongwith the CDR reflecting the same is filed by the NCB itself, alongwith the complaint.

6. It is submitted by Ld. Counsel for applicant/accused that the arrest memo dated 20.07.2023 does not mention any place of arrest of the applicant/accused and same is in violation of guidelines issued by the Hon'ble Supreme Court of India in "***D. K. Basu Vs. State of West Bengal***", (1997) 1 SCC 416. Furthermore, the place where his signature is shown to the appended is also out of the format, raising reasonable suspicion that it was taken on blank paper and the said blank paper was later converted into the arrest memo.

7. It is submitted by the Ld. Counsel for the applicant/accused that in the present case there has been non-compliance of mandatory provision, i.e Section 52 of the NDPS Act, since grounds of arrest were never supplied to the applicant/accused by the IO. Only arrest memo was prepared, which are not containing any grounds of arrest. The fundamental right of the applicant/accused as enshrined in Articles 21 and 22 (1) of the Constitution of India have been repudiated and hence, the arrest was illegal and *non-est*. The Ld. Counsel has relied upon the decisions of the Hon'ble Supreme Court in "**Pankaj Bansal Vs UOI & Ors.**" (2024) 7 SCC 576; "**Prabir Purkayastha Vs State (NCT of Delhi)**", (2024) 8 SCC 254; and "**Vihaan Kumar vs State of Haryana**", 2025 SCC OnLine SC 269. Even the applicant/accused was not produced before this court within 24 hours of his illegal detention, therefore, the prejudice test as propounded by the Hon'ble Supreme Court of India in "**Karnataka Vs. Sri Darshan Etc.**", 2025 SCC OnLine SC 1702 is satisfying in the facts of the present case.

8. It is submitted by Ld. Counsel for applicant/accused that the prosecution has not been able to link the recoveries with the present applicant/accused and since he was not in conscious possession of the contraband, the presumptions u/s 35 and 54 of the Act are not applicable to him. The mobile phone, which is attributed to the applicant/accused i.e. Make 'Nothing Phone -1' containing the SIM Card of 97817954487 does not belong to the applicant/accused and same has been planted upon him. The said number was not eligible in the name of the applicant/accused and

the CAF of the said SIM Card duly show that the same was obtained from one Gurtej Singh. The said person is not examined by the IO and there is no linkage of the applicant/accused with the number in question. The alleged recovery of the said mobile phone alongwith the other mobile phones belonging to the applicant/accused were conducted without following the procedural safeguards mandated u/s 50 of NDPS Act or u/s 100 CrPC, 1973. No such notice regarding the option to be searched in the presence of Gazetted Officer or the Magistrate was given to the applicant/accused and therefore, the entire recovery and seizure of the mobile phone, in which the NCB is claiming to have found the incriminating material is cast under a shadow of doubt. The benefit of the same must go to the accused.

9. It is submitted by Ld. Counsel for applicant/accused that there is no CDR, message/chats of the applicant/accused with any of the co-accused persons. There are no financial transactions between him and co-accused persons. There is no CDR or financial transaction between him or the alleged suppliers of the contraband sitting in countries outside India. Since, the only case of the prosecution against the applicant/accused is based on the statements u/s 67 of the Act, which in itself is inadmissible in law, after the judicial pronouncement in the decision of ***“Tofan Singh Vs. State of Tamil Nadu”***, (2021) 4 SCC 1. Therefore, no reliance must be placed on the same.

10. It is submitted by Ld. Counsel for applicant/accused that the Hon’ble High Court of Delhi in hearing the bail applications of the co-accused persons had already held that there is no call

records of the applicant/accused with the co-accused and there is no financial transactions of the co-accused persons with co-accused Avtar Singh, who as per the case of the prosecution was working on the instructions of the applicant/accused. The entire case of the prosecution is that co-accused Avtar Singh used to send the parcels containing the contraband to other co-accused persons, at the behest of the applicant/accused. However, in **“Vaibhav Yadav Vs. NCB”**, 2025 SCC OnLine Del 2565 it was categorically held that there is no incriminating material to show that Avtar Singh was the sender of the parcels. The KYC forms allegedly given by DTDC to the NCB have not been filed by the NCB, alongwith their complaint. Furthermore, the alleged bitcoin transaction between the applicant/accused and co-accused Avtar Singh were dated 22.08.2022 and 07.09.2022, although the alleged transaction is supposed to be dated 06.04.2023.

**11.** It is submitted by Ld. Counsel for applicant/accused that the twin conditions of Section 37 of the act are fully satisfied in the present case and in support of the contentions, the Ld. Counsel has relied upon the decisions of this Court in **“NCB Vs. Qari Hamidullah”**, IA No. 3 in SC No. 526/2022, dated 21.08.2025 wherein this Court has held that:

*“There is no financial transaction or CDR connectivity of his with any of the co-accused persons. The mobile phone recovered from him is not registered in his name. The mere fact of the location of the said mobile phone is near Bhogal area is not sufficient to link him with the recovery of the contraband. The case of NCB that every time he used to travel to Mujaffarnagar, after switching off the mobile in order to avoid*

*his location being shown there is also too far-fetched to incriminate him. There is no incriminating evidence of any monetary transactions between the applicant/accused and other co-accused persons and there is no CDR or Cell Location ID chart etc. to link him with the offence in question and the entire case is based upon circumstantial evidence. Therefore, the decision of the Hon'ble Delhi High Court in Phundreimayum Yas Khan (Supra) is squarely covering the facts and circumstances of the present case, as there is no recovery of commercial quantity of the contraband from the applicant/accused, or at his instance or behest or from his premises (owned or rented), therefore, the bar of Section 37 of the Act would not come into picture as there are more than strong probable circumstances that he may not be guilty of the offence he is charged with. He is not convicted in any other case so far and mere involvement in other case registered by NCB and DRI against him is not the sole determining factor. Therefore, in the considered opinion of this court, the present applicant/accused has made out his case for grant of regular bail to him.”*

**12.** Per contra, it is submitted by the Ld. SPP for NCB that the applicant/accused is the kingpin of Zambada Cartel, which was supplying the LSD blots and other contraband to customers throughout the country. The co-accused persons were granted bail by the Hon'ble High Court of Delhi, not on merits, however, merely upon the period of custody undergone by them and their rights protected under Article 21 of the Constitution of India. The applicant/accused is wrongly relying upon the portion of the decision of the Hon'ble High Court of Delhi in Vaibhav Yadav

(supra), since the submissions of the Ld. SPP for NCB in the said case was merely recorded in the said order that godown entry is a general routine entry and no further reliance can be placed upon the same. In the said common order, as far as accused Jithin Cherian and Yash Gupta, the Hon'ble High Court of Delhi had dismissed their cases on merits. Therefore, the applicant/accused can not claim parity with the said co-accused persons.

**13.** It is further submitted by the Ld. SPP for NCB that as per the mobile data extraction report, dated 02.01.2024, pertaining to the mobile phone recovered from the possession of the applicant/accused, his contact list containing the name of the co-accused persons, including the image found on the said phone, wherein he had downloaded the logo of 'Cartel De Zambada (C. D. Z.)' was found and he had used the said image as the profile picture on his account, wherein he tried to portray himself to be linked with the Zambada/Sinaloa Cartel El Chapo. The photographs of the LSD Blots alongwith the courier receipts and the postal receipts of the parcels sent to the co-accused persons were found in his mobile phone. There were whatsapp chats, wherein he was having discussions with one Dr. Seuss, the alleged supplier of the LSD Blots, based out of Switzerland. He had also made a WickerMe App profile in the name of Zamabada Cartel and he had sent the address of one Mohit, who was residing at Faridabad, where the parcel in question were to be sent to India from Europe.

**14.** It is further submitted by the Ld. SPP for NCB that the details of his earlier shipments alongwith the "Drug Menu",

wherein he had put up on Dark Web the details of the contraband available with him, alongwith the price, delivery time and delivery charges. He was not only sourcing the contraband from abroad, however, he was the one responsible for sending it to customers throughout India. He was also offering local dealership to different persons situated in remote parts of the country and the said drug menu also contained the details of the percentage he would keep from the said shipments.

15. It is further submitted by the Ld. SPP for NCB that the IDs of all the co-accused persons were also found in his mobile phone. No prejudice in non supply of the grounds of arrest in writing was caused to him, since, he was duly represented by his private counsel at the time of first remand application being moved before this Court. Therefore, the facts are fully covered under the decision of Hon'ble Supreme Court of India in ***Sri Darshan (Supra)***. The FSL result have come positive qua contraband i.e. 807 LSD Blots (13.47 grams), which was sent by the applicant/accused to the other co-accused persons. The rigors of Section 37 of the Act are fully applicable to the facts of the present case. If released on bail, he may abscond and flee away from hands of justice. Therefore, the NCB is strongly opposing the present application.

16. The allegations against the applicant/accused are extremely serious. He is stated to be the mastermind and the kingpin of the cartel, which was supplying LSD Blots and other contrabands to customers throughout the country. The arrest of the applicant/accused took place on 20.07.2023, i.e. prior to the

decision of the Hon'ble Supreme Court of India in ***Pankaj Bansal (Supra)*** and as per the decision of the Hon'ble Supreme Court of India in ***"Ram Kishor Arora Vs. ED"***, Neutral Citation:2023:INSC:1082, the said decision of Pankaj Bansal is applicable prospectively and not retrospectively. The applicant/accused was duly represented by his counsel at the time of his first production before this Court seeking departmental custody and no such ground of non-supply of written grounds of arrest or any prejudice being caused to him was raised at that stage.

17. The Hon'ble Supreme Court of India has recently in state of ***"Karnataka Vs. Sri Darshan Etc."***, Neutral Citation 2025 INSC 979 has discussed all the previous decisions and held that the constitutional and statutory framework does mandate that the arrested person must be informed of the grounds of arrest, however, neither provision prescribes a specific form, or insists upon written communication in every case. The judicial precedents of the Hon'ble Apex Court have clarified that the substantial compliance with these requirements is sufficient, unless demonstrable prejudice is shown. Both the decisions in ***Vihaan Kumar (Supra)*** and ***Kessireddy (Supra)*** have clarified that written, individualized grounds are not an inflexible requirement in all circumstances. No demonstrable prejudice is shown by the applicant/accused. Therefore, no ground for grant of bail is made out on this aspect of grounds of arrest. The prejudice, if any shall be seen at the time of trial. There is no ground made out by the applicant/accused for this Court to give a finding at this stage that there are no 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. Furthermore, the issue of the alleged discrepancy in the dates of detention/arrest of the applicant/accused is also a matter of trial and same can not be considered a ground for grant of bail at this stage, since at the earliest possible opportunity, the said ground was never raised by the applicant/accused, when he was produced before the Ld. Predecessor of this Court after his arrest in the present case.

**18.** There is no merit in the submissions of Ld. Counsel for accused that the seizure memo of the mobile phones needed to be preceded by notice u/s 50 of the Act. The said notice is a mandatory requirement of the law, where the officer duly authorized u/s 42 of the Act, has to conduct the search of any person with respect to possession of any “Narcotics Drugs” or “Psychotropic Substance” or “Controlled Substance or Article or Document”. The Legislature chooses its words extremely carefully and u/s 50 (5) of the Act, the intent was qua the search with possession of any NDPS substance or any controlled substance or article or document. The controlled substance or article or document are placed in one category, which is preceded by a comma and there is no comma in between the three words i.e. controlled substance; article; and document. Therefore, the mobile phones recovered from the cursory search of the applicant/accused were not the articles which are contemplated u/s 50 of the Act. Therefore, the alleged recovery of the said mobile phone can not be faulted with on this ground.

19. Merely, because the mobile phone recovered from the possession of the applicant/accused is not in his name and the number was obtained in the name of some other person, does not absolve him from culpability. The said mobile phone contains all the incriminating material including the pictures of the LSD Blots, the contact lists of the purchasers and the source. There are whatsapp chats between the applicant/accused and the supplier namely Dr. Suess, who is based out of Europe. He had further portrayed himself to be working under the aegis of Zambada Cartel, the most dreaded narcotics criminal in the world. The courier receipts and the chats are also found in the mobile phone. The issue of whether the said recovery of the mobile phone and there being financial transactions of his with co-accused persons or not, is a matter of trial and no finding qua the twin conditions ins Section 37 can be given at this stage. The reliance placed by him on the decision of this Court in *Qari Hamidullah (Supra)* is highly misplaced, since the facts of this case are completely distinguishable with the facts of the present case and the role assigned to the applicant/accused and the incriminating material i.e. the recovery of mobile phone and the data found on the said phone and the said incriminating material were not attributable to the said petitioner before this Court in that case.

20. Furthermore, at this stage from the material available on the record, this Court cannot give any subjective finding of there being any strong reasonable suspicion of the accused not being guilty of the offences in question. Lastly, the continued incarceration in JC is no ground for consideration u/s 37 of the Act. Reliance is placed on the decision of the 3 Judge Bench of

the Hon'ble Supreme Court in "**NCB Vs Mohit Aggarwal**", Neutral Citation 2022:INSC:729. Therefore, no ground of parity with any of the co-accused person is made out. Hence, in the considered opinion of this Court, no ground for grant of regular bail is made out at this stage. The present application stands disposed off accordingly.

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

22. Application is disposed off accordingly.

23. A copy of this order be given *dasti* to all concerned parties.

24. 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.

25. Copy of this order be sent to concerned Jail Superintendent, for necessary intimation to the applicant/accused.

**ATUL AHLAWAT)**  
**ASJ/SPECIAL JUDGE (NDPS)/**  
**PHC/NEW DELHI/26.09.2025**