

IA No. 1/2025
SC No. 156/2025
FIR No. 101/2025
PS V K (N)
State Vs. Mohd Rahul

05.08.2025

Present: Sh. K D Pachauri, Ld. Additional 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
05.08.2025

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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 24.02.2025, after the receipt of alleged secret information, the ANTF team apprehended the applicant/accused and from his possession 5 grams of MDMA was allegedly recovered. There has been complete non-compliance of section 50 of the Act, since the search was affected earlier and then the notice u/s 50 was given. The said fact is duly recorded in the FIR, wherein the fact of alleged recovery is mentioned prior to the handing over of the notice.

4. It is submitted by Ld. Counsel for applicant/accused that since there is alleged recovery of only intermediate quantity of the contraband, the rigors of section 37 shall not apply. There is no joint recovery from the applicant/accused and co-accused. Till the time charges u/s 29 of the Act are framed, the said recovery from co-accused cannot be added to the recovery of contraband from the applicant/accused.

5. It is submitted by Ld. Counsel for applicant/accused that the alleged apprehension, search and seizure were affected from a public place and yet not independent public witness was joined in the proceedings, thereby rendering the same suspicious.

6. It is submitted by Ld. Counsel for applicant/accused that 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.

7. 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.

8. Per contra, it is submitted by the Ld. Addl. PP duly assisted by the IO that upon the secret information received, the ANTF officials constituted a raiding team and the applicant/accused and

co-accused S.K. Sabir were apprehended when they were coming on foot. The applicant/accused and the co-accused were coming together to deliver the contraband and there is CDR connectivity between the two of them. The notice u/s 50 of the Act was duly given to them and the same were found in their cursory search and mentioned in the personal search memo. The accused persons along with their third associate, who managed to flee away from the spot, were all identified by the secret informer as the persons who supply the contraband. The applicant/accused is part of the larger conspiracy for supplying the contraband to different persons/customers. There is total recovery of 97 grams of MDMA from the two accused persons and same is commercial quantity and as there are allegations of section 29 of the Act, the total quantity has to be considered and the rigors of section 37 shall 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.

9. After considering the rival contention of the parties, in light of the facts & circumstances of the present case, ***Firstly***, since there are recoveries of the contraband from the applicant/accused and co-accused, who were both apprehended at the same time, after they were identified by the secret informer as the suppliers of the drugs. The total weight of the recovered contraband is of commercial quantity. Since, there are allegations

of conspiracy and the chargesheet was duly filed u/s 29 of the Act, therefore, the rigors of section 37 of the Act shall duly apply.; **Secondly**, there are CDR connectivity and the location Id chart also showing that the applicant/accused and co-accused persons were residing at the same place. The applicant/accused was allegedly the protégé of the co-accused persons, who were teaching him how to pack the contraband in small packets and smaller quantity packets were given to him, for selling the same.; **Thirdly**, the personal search memo clearly mentions the recovery of the original notice u/s 50 of the Act, which was found on his cursory search. Therefore, prima facie the mandatory compliance of section 50 was made in the present case.; **Fourthly**, the FSL team found the samples positive for MDMA on the field-testing analysis. The comprehensive FSL result is still awaited and the same would be filed before this Court in the form of a supplementary chargesheet. Till then cognizance can't be taken and the trial is yet to begin. **d; Lastly**, the ratios of the decisions cited on behalf of the applicant/accused are not applicable, as they are all distinguishable on facts. 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.

10. 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.

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

12. Application is disposed off accordingly.

13. 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.

14. 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
05.08.2025