

IA 10/26 S.C 323/2015
FIR 11/2019
PS Special Cell
STATE VS CHHOTE KHAN

23.07.2026

Present: Sh. Rajesh Kumar, Ld. Addl. PP for the State.
Sh. W. A. Ansari, Sh. Adeel Ahmed and Noor Nabi,
Ld. counsels for applicant/accused.

Vide my separate order of even date, the present application seeking 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/Spl. Judge, NDPS/N Delhi
23.07.2026/r

**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. Vide this order, the second application filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), on behalf of applicant/accused Chhotte Khan, seeking regular bail in the present FIR No. 11/2019, registered under Sections 21/29/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985, Police Station Special Cell, is being decided.
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. The case of the prosecution, in brief, is that on 18.01.2019, acting upon secret information, the police apprehended the applicant along with co-accused Sanjay and Mausam Ali while they were travelling in an Ertiga car near Nirankari Sarovar, Delhi. It is alleged that after service of notices under Section 50 of the NDPS Act and in the presence of a Gazetted Officer, search of the accused persons and the vehicle was conducted. A

quantity of 1.5 kilograms of heroin is alleged to have been recovered from the possession of the present applicant, another 1.5 kilograms from co-accused Mausam Ali and 2 kilograms from a secret cavity in the vehicle.

4. As per the FSL report, the sample pertaining to the substance allegedly recovered from the applicant was found to contain diacetylmorphine to the extent of 4.7%, besides acetaminophen, acetylcodeine, morphine-3-acetate, 6-monoacetylmorphine and trimethoprim. The prosecution also relies upon the statements of the recovery witnesses, CDR connectivity and intercepted conversations allegedly relating to trafficking of narcotic substances.

5. Learned counsel for the applicant has argued that the case does not involve commercial quantity because the FSL report records only 4.7% diacetylmorphine in the recovered substance. It is submitted that only the actual narcotic content can be taken into consideration and, on that basis, the quantity attributable to the applicant would fall below commercial quantity.

6. It is further argued that the samples sent to the FSL were drawn at the spot and were not drawn or certified in the presence of a Magistrate. The subsequent proceedings under Section 52A of the NDPS Act were conducted only on 19.01.2021, nearly two years after the alleged recovery. Reliance has been placed upon *Yusuf @ Asif v. State*, 2023 INSC 912 and *Simarnjit Singh v. State of Punjab*, Criminal Appeal No. 1443 of 2023, decided on

09.05.2023 by the Hon'ble Supreme Court, to contend that non-compliance with Section 52A creates a serious doubt regarding the identity and evidentiary value of the samples.

7. Learned counsel has also relied upon *Rabi Prakash v. State of Odisha*, 2023 SCC OnLine SC 1109, and *Ejike Jonas Orji v. Narcotics Control Bureau*, Bail Application No. 997/2022, decided by the High Court of Delhi on 13.06.2022, to submit that prolonged incarceration and delay in conclusion of trial may justify grant of bail even in a case involving commercial quantity.

8. It is further submitted that the applicant is suffering from serious medical ailments, including cervical radiculopathy, weakness and numbness in his limbs and diminished muscular strength in his hands, because of which he is unable even to button his shirt without assistance. Reliance has been placed upon the medical status report received from the Jail Superintendent.

9. Learned counsel has further contended that no independent public witness was joined at the time of the alleged recovery, though the recovery was allegedly effected at a public place. The investigating agency did not record the names or particulars of the persons who allegedly refused to join the proceedings.

10. As regards the applicant's failure to surrender after expiry of the interim bail granted by the Hon'ble High Court, it is argued that the applicant had suffered paralysis and was physically incapable of surrendering within time. It is submitted

that after improvement in his condition, he voluntarily surrendered before the Court by moving an application and also deposited the fine imposed upon him. Reliance has been placed upon *Mike v. State (Government of NCT of Delhi)*, Bail Application No. 555/2024, decided by the Hon'ble High Court of Delhi on 03.04.2024, to contend that a person who had earlier jumped bail and was declared a proclaimed offender is not absolutely disentitled from being considered for bail. It is also argued that co-accused Mausam Ali and Kaiser Ali have already been enlarged on bail and the applicant is entitled to parity.

11. Learned Additional Public Prosecutor for the State has opposed the application. It is submitted that 1.5 kilograms of heroin was recovered directly from the applicant and, for determination of quantity, the entire weight of the mixture is required to be considered. The percentage of diacetylmorphine cannot be separated from the neutral or other substances contained in the mixture.

12. It is further submitted that the applicant had earlier secured interim bail from the Hon'ble High Court but failed to surrender within the stipulated period. No application for extension of interim bail was moved and no information regarding the alleged illness was given to the Court. The applicant surrendered only after he had been declared a proclaimed offender. His conduct, therefore, demonstrates a real possibility of his absconding again.

13. Learned Additional Public Prosecutor has further

submitted that the applicant cannot claim benefit of delay when a material part of the delay was caused by his own absence from the proceedings. The cases of the co-accused are stated to be distinguishable on the basis of their respective roles, period of custody and other individual circumstances. It is also submitted that non-joining of public witnesses and the objection regarding Section 52A are matters requiring evidence and cannot, at this stage, furnish reasonable grounds for believing that the applicant is not guilty.

14. I have considered the rival submissions and have perused the record.

15. The first contention that only 4.7% diacetylmorphine is to be considered for determining the quantity cannot be accepted. The Hon'ble Supreme Court in *Hira Singh and Another v. Union of India and Another*, (2020) 20 SCC 272, has held that in the case of a mixture of a narcotic drug or psychotropic substance with one or more neutral substances, the quantity of the entire mixture is relevant for determining whether the recovered substance constitutes small, intermediate or commercial quantity. The earlier view in *E. Micheal Raj v. Intelligence Officer, Narcotic Control Bureau*, (2008) 5 SCC 161, that only the actual narcotic content should be considered, was expressly overruled.

16. Accordingly, the gross quantity of the mixture allegedly recovered from the applicant, namely 1.5 kilograms, has to be taken into consideration. The case, therefore, *prima facie*

involves commercial quantity and the restrictions contained in Section 37 of the NDPS Act are attracted.

17. The judgments in *Yusuf @ Asif (Supra)* and *Simarnjit Singh (Supra)* emphasise the importance of the procedure prescribed under Section 52A of the NDPS Act. However, both the said decisions arose from appeals against conviction, after the entire evidence had been recorded and evaluated.

18. More importantly, the issue concerning the effect of delay or non-compliance with Section 52A at the stage of bail has subsequently been considered by the Hon'ble Supreme Court in *Narcotics Control Bureau v. Kashif*, 2024 INSC 1045. The Hon'ble Supreme Court held that the object behind the insertion of Section 52A was to provide a mechanism for early disposal of seized narcotic drugs and psychotropic substances, considering their hazardous nature, vulnerability to theft or substitution and the difficulties relating to their storage. It was further held that neither the NDPS Act nor Section 52A prohibits the investigating officer from drawing samples at the spot at the time of seizure in accordance with the applicable Standing Orders. The Hon'ble Supreme Court further clarified that any lapse, delay or non-compliance with Section 52A would not, by itself, either vitiate the trial or entitle an accused to bail. The Court is required to consider the remaining primary evidence collected during investigation, the effect of the alleged irregularity and the statutory presumptions permissible under the NDPS Act. Non-

compliance with Section 52A cannot, therefore, be treated as a standalone circumstance satisfying the twin conditions prescribed under Section 37 of the NDPS Act.

19. In the present case, the prosecution asserts that the samples drawn at the time of seizure were promptly deposited with the FSL and were found positive for heroin. It is also stated that proceedings under Section 52A were subsequently conducted before the learned Magistrate on 19.01.2021 and samples were drawn from the bulk case property. Whether the samples were properly drawn, sealed and preserved is a matter requiring consideration of the evidence during trial.

20. In view of the law laid down in *NCB v. Kashif (Supra)*, the objection regarding the delay in conducting the proceedings under Section 52A or the drawing of the initial samples at the spot cannot, by itself, constitute a ground for grant of bail. At this stage, there is available before the court a positive FSL report and other material relied upon by the prosecution. This Court, therefore, cannot record a finding that the entire primary evidence stands obliterated or that there are reasonable grounds for believing that the applicant is not guilty merely on account of the alleged non-compliance with Section 52A.

21. The absence of an independent public witness also does not, by itself, render the recovery unbelievable at the stage of bail. It is a well settled position in law that the testimony of official witnesses is not legally inadmissible merely because it is

not corroborated by a public witness.

22. The applicant has also relied upon delay in trial. The Court is conscious that prolonged pre-trial detention may, in an appropriate case, outweigh the statutory restrictions under Section 37. In *Rabi Prakash (Supra)* the accused had remained in uninterrupted custody for more than three and a half years, had no criminal antecedents and only one out of nineteen prosecution witnesses had been examined. In *Ejike Jonas Orji (Supra)*, the applicant had undergone nearly eight years of custody, and the Court specifically found that there was no assertion that the accused had contributed to the delay.

23. The facts of the present case are materially different. The applicant had earlier been granted the benefit of interim bail but did not surrender upon its expiry. He neither approached the Court for extension of interim bail nor placed any material regarding his alleged medical incapacity before the Court within a reasonable time. He remained absent from the Court and was declared a proclaimed offender. His subsequent surrender cannot redeem the effect of his earlier conduct. A person who has materially contributed to the delay by remaining absent cannot claim the entire period during which the proceedings remained obstructed as a ground for bail.

24. The decision in *Mike v. State (Government of NCT of Delhi)* also does not assist the applicant. In that case, the recovery was of 40 grams of cocaine, which was an intermediate

quantity. Consequently, Section 37 of the NDPS Act was not applicable. The applicant therein had undergone more than five years and seven months of custody and had already been granted bail in the other case in which he had been arrested. In the present case, the recovery attributed directly to the applicant is of commercial quantity and the statutory embargo under Section 37 squarely applies.

25. It is correct that the mere fact that an accused was earlier declared a proclaimed offender does not create an absolute prohibition against consideration of a subsequent bail application. However, at the same time, such conduct remains highly relevant while assessing whether the accused is likely to appear during trial or is likely to abscond again. The explanation offered by the applicant does not satisfactorily account for his failure to inform the Court of his alleged paralysis, to seek extension of interim bail or to surrender promptly. His previous conduct, therefore, gives rise to a substantial apprehension that he may not remain available for trial if released.

26. The plea of parity with co-accused Mausam Ali and Kaiser Ali is also not sufficient. Parity cannot be claimed merely because two persons are arrayed as co-accused in the same case. Their individual role, nature of recovery, period of custody, conduct during proceedings and reasons recorded in their respective bail orders have to be considered. In the present case, there is an allegation of direct recovery of 1.5 kilograms of

heroin from the applicant, besides his previous misuse of interim bail. The applicant has, therefore, not demonstrated his similar standing with the co-accused so as to claim bail solely on parity.

27. The medical status report of the applicant does not indicate that the applicant is suffering from an immediate life-threatening condition which cannot be treated or managed while he remains in custody. The record reflects that he has been examined in the jail hospital as well as at government hospitals and has been referred to the concerned specialist departments. Appropriate directions can always be issued to the Jail Superintendent to ensure that the applicant receives timely consultation, diagnostic tests, physiotherapy and prescribed treatment. The medical condition, in the circumstances presently shown, does not justify regular bail at this stage.

28. Accordingly, the present bail application is dismissed.

29. The Jail Superintendent is, however, directed to ensure that the applicant is regularly examined by the concerned specialists at the appropriate government hospital and is provided all prescribed medicines, investigations, physiotherapy and necessary assistance for carrying out his daily activities. In case any special treatment or investigation is required which is not available in the jail dispensary, the applicant shall be taken to the concerned government hospital without avoidable delay.

30. The present application stands disposed off accordingly.

31. Nothing observed in this order shall be construed as an

expression on the merits of the case.

32. Copy of this order be given dasti and be sent to the concerned Jail Superintendent for information and compliance.

(Jitendra Pratap Singh)
ASJ/Spl. Judge, NDPS/N Delhi
23.07.2026/r