

IA No. 36/2023  
SC No. 53/2022  
State Vs. Anuj Kumar  
FIR No. 760/2021  
PS: New Usmanpur  
U/s: 20 of NDPS Act

24.10.2024

**ORDER ON APPLICATION FOR GRANT OF BAIL  
FILED BY THE APPLICANT/ACCUSED ANUJ KUMAR.**

1. This order of mine shall dispose of an application for grant of bail filed on behalf of the applicant/accused Anuj Kumar.
2. I have already heard the counsel for this applicant /accused and Ld. Additional Public Prosecutor for State.
3. Sh. S. N. Qureshi, Ld. Counsel for applicant/accused submitted that this applicant/accused has been falsely implicated in the present case and nothing incriminating was recovered from the car of the applicant/accused, as alleged by the police and also submitted that the case of the prosecution is based on the falsehood, as, there are lacunas in receiving information and lodging the GD entry in this regard and also in depositing the case properties in the Malkhana. Even the seizure memo of the contraband does not disclose the colour of the packets, which were kept in colour plastic bag.
4. Ld. Counsel for applicant/accused submitted that the co-accused persons namely Furkan Ahmad and Shakeel Ahmad

have already been granted bail by this Hon'ble Court and submitted that on the ground of parity, this applicant/accused may also be granted bail and the applicant/accused is ready to abide by all the terms and conditions imposed by the court, if he will be released on bail.

5. On the other hand, Ld. Additional Public Prosecutor for the State vehemently opposed the present application for bail and submitted that 16.744 Kilograms Ganja was recovered from the Dickey of the vehicle, which was registered in the name of the applicant/accused and the quantity of the contraband is of commercial nature, so, embargo contained U/sec. 37 of the NDPS Act is applicable to the present case and submitted that in case, this applicant/accused is granted bail, he may hamper with the witness and tamper with the evidence and likelihood of fleeing away from justice by this applicant/accused cannot be ruled out and prayed for dismissal of present application for grant of bail.

6. I have given thoughtful consideration to the submissions made by counsel for this applicant/accused and Ld. Addl. PP for State and perused the record.

7. On enquiry, IO submitted that the vehicle, in which the contraband was recovered, is registered in the name of this applicant/accused. However, he failed to distinguish the role of the present applicant/accused from the other two co-accused persons.

8. The perusal of the record reveals that the prosecution has cited total 15 witnesses and till date, only 4 witnesses have been examined and cross-examined. The trial is not likely to be concluded in the near future.

9. The Hon'ble High Court of Delhi in case, **Nadeem Chaudhary Vs. State of NCT of Delhi** (Bail Application No. 39/2022) has observed that:

“The object of Jail is to secure the appearance of the accused persons during the trial. The object is neither punitive nor preventive and the deprivation of liberty has been considered as a punishment. The applicant cannot be made to spend the entire period of trial in custody specially when the trial is likely to take considerable time. The presence of the accused can be secured at the time of trial by putting appropriate conditions”.

10. The Hon'ble High Court of Delhi relying upon the case, **Deepak Yadav V. State of U.P.**, (2022) 8 SCC 559 has observed that:

“Moreover, it is settled law that this Court at the stage of granting bail to the applicant is only to look into the (i) the nature and gravity of the offences/charges coupled with the severity of punishment in case of conviction; and (ii) if there is any chances of the accused absconding once out of bail; and (iii) if there is a reasonable apprehension of the accused influencing the witnesses or tampering the records when released on bail; and (iv) the past conduct and previous record of the accused as he should neither be a threat to the society of which he is going to be a part of once again nor there should be any change of his repeating the same or indulging in any other offence; and (v) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; and (vi) behaviour, means, position and standing of the accused in the society”.

11. The Hon'ble High Court of Delhi in another case, **Raghav Thakur Vs. State** (Bail Application No. 1397/2023) has also observed that:

“The object of keeping a person in custody is to ensure his availability to face the trial and to receive the sentence that may be passed. Apart from the seriousness of the offence, other factors also have to be borne in mind while considering the bail application. Delay in commencement and/or conclusion of trial is also to be taken into account and the accused cannot be kept in custody for indefinite period, if the trial is likely to take long time”.

12. The Hon'ble Supreme Court of India in case, **Tofan Singh Vs. State of Tamil Nadu, 6 (2021) SCC 1** has also observed that:

“a confessional statement recorded under section 67 of the NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act.”

13. The Hon'ble Apex Court, in the case of **Union of India v. Shiv Shanker Kesari: (2007) 7 SCC 798**, has observed as under:

"11. The court while considering the application for bail with reference to Section 37 of the Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty.

12. Additionally, the court has to record a finding that while on bail the accused is not likely to commit any offence and there should also exist some materials to come to such a conclusion."

14. The Hon'ble Apex Court, in the case of **Mohd. Muslim v. State (NCT of Delhi): 2023 SCC OnLine SC 352**, has reiterated the law in regard to Section 37 of the NDPS Act as under:

"20. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not comm't any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act."

15. The Supreme Court in **State of Haryana v. Samarth Kumar, 2022 SCC OnLine SC 2087**, has held that:

"The advantage of the law laid down in Tofan Singh (supra) can be availed of by the accused at the stage of arguing a regular bail application. It is also an admitted position that despite search by the raiding team, no recovery of any narcotic or psychotropic substance was made from the Applicant or his premises."

16. In **Phundreimayum Yas Khan v. State (NCT of Delhi), 2023 SCC OnLine Del 135**, the Hon'ble High Court of

Delhi has held that:

“Where there is no recovery from or at the instance of the Applicant and there is no other material to link the Applicant to the recovery of commercial quantity from the co-accused, rigours of Section 37 of NDPS Act would not apply.”

17. The applicant/accused was arrested on 17.10.2021 and since then, he is in judicial custody (except the period during which he was on interim bail). Thus, he has already remained in custody for almost three years. So far as the bar u/s. 37 of NDPS Act is concerned, the prosecution has been duly heard. Therefore, the first requirement of Sec. 37 of NDPS Act has been complied with. In view of the various pronouncements of the Hon'ble High Court of Delhi and Hon'ble Supreme Court of India that prolonged incarceration undermines the right to life, liberty, guaranteed under Article 21 of the Constitution of India, and therefore, conditional liberty must take precedents over the statutory restrictions under Section 37 of the NDPS Act. It is further worth-noticing that earlier the applicant/accused was released on interim bail and after expiry of the period of interim bail, the applicant/accused had surrendered before the concerned Jail Superintendent and there is no allegation that he had misused the liberty while on interim bail. Moreover, there is no previous involvement of the present applicant/accused and there is nothing on record to show that if the applicant/accused is released on bail, he is likely to commit the similar offence in future. Needless to say that in case, the applicant/accused is found

involved in any criminal case in future, the State shall be at liberty to move an appropriate application for cancellation of bail.

18. Considering all the facts and circumstances of the present case and the fact that both the co-accused persons namely Furkan Ahamd and Shakeel Ahmad have already been granted bail in the present case and it will take some time in concluding the trial, this applicant/accused Anuj Kumar is ordered to be released on bail on furnishing personal bond in the sum of Rs.50,000/- each with two sureties of like amount, subject to the following conditions:

- (1). He will not come in contact with any of the witnesses of the prosecution.
- (2). He will not tamper with the evidence of the prosecution.
- (3). He will not indulge in any criminal activity of similar nature in future.
- (4). He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him from disclosing such facts to the court or the IO.

19. In case, if he violates any of the above conditions, the prosecution will be at liberty to file application for cancellation of bail of this accused.

20. In the above said terms, the application for grant of bail filed by applicant/accused Anuj Kumar stands **allowed**. Dasti copies of this order be provided to the parties. **Attested copy of this order be also sent to the Superintendent of Central Jail concerned for supplying the same to this applicant/accused.**

(PUNEET PAHWA)  
Special Judge (NDPS)/Addl. Sessions Judge  
North East/KKD Courts, Delhi/24.10.2024