

SC 182/2023
STATE Vs. SARASWATI
FIR No. 729/2022
PS- (Govind Puri)
u/s 20/61/85 of NDPS Act

23.04.2025

File taken up today on an application under Section 483 of Bhartiya Nagrik Suraksha Sanhita, 2023, filed on behalf of the applicant/accused Saraswati for grant of regular bail.

Present : Sh. S. K. Kain, Ld. Addl. PP for the State.
Sh. Shan-ul-Islam, Ld. Counsel for the
applicant/accused.

1. Vide this order, I shall adjudicate upon the regular bail application filed on behalf of the applicant/accused Saraswati. Arguments were heard at length, the gist whereof is discussed hereunder.

2. Ld. Counsel for the applicant/accused submitted that the applicant/accused has been languishing in JC since 15.03.2022 i.e. for more than 3 years and that she has been falsely implicated in the present matter as she has nothing to do with the alleged offences. Ld. Counsel further submitted that the FIR does not clarify the ownership of the alleged contraband and without clear evidence that the applicant/accused owned or intended to sell the contraband, it is inappropriate to assume the applicant/accused has been guilty for the alleged offences. Ld. Counsel further submitted that investigation in the present matter has been completed, chargesheet has been filed, and charge has also been framed, and therefore, no fruitful purpose would be

served by keeping the applicant/accused behind the bars for an indefinite period. Ld. Counsel also submitted that applicant/accused has clean past antecedents and has not been involved in any criminal case except the instant one. Ld. Counsel thus, submitted that accused ought to be granted bail as he is ready to abide by all the terms and conditions imposed upon him while granting the bail. In support of his submissions, Ld. Counsel placed reliance on the following judgments:

i). Dheeraj Kumar Shukla vs. The State of Uttar Pradesh Special Leave to Appeal (Crl.) No(s.) 6690 of 2022;

ii). Badsha SK Vs. The State of West Bengal SLP (Crl) No. 9716/2023 (II-B);

iii). Vikas @ Vicky vs. State (Govt. of NCT of Delhi) Bail Application No. 1668/2024 & Crl. M. A. 14502/2024.

3. *Per contra* Ld. Addl. PP for the State vehemently opposed the bail application citing the gravity of the offences as one of the main grounds. Ld. Addl. PP further submitted that the recovery in the present case is of commercial quantity. Ld. Addl. PP also submitted that prosecution witnesses are yet to be examined in the matter and thus, accused ought not to be granted bail.

4. I have heard the arguments addressed by the opposite parties and perused the record.

5. It is settled law that the Court, while considering the application for grant of bail, has to keep certain factors in mind, such as, whether there is a *prima facie* case or reasonable ground to believe that the accused has committed the offence;

circumstances which are peculiar to the accused; likelihood of the offence being repeated; the nature and gravity of the accusation; severity of the punishment, the danger of the accused absconding or fleeing if released on bail; reasonable apprehension of the witnesses being threatened; etc. However, at the same time, period of incarceration is also a relevant factor that is to be considered.

6. During the course of arguments, it was brought to the fore that in the present matter, investigation has been completed, chargesheet has been filed and charge has also been framed against the applicant/accused. The accused is in JC since 15.03.2022 i.e. for more than 3 years. Further, no previous involvement of applicant/accused has been shown by the IO. In the present case, the trial is likely to take long time. Speedy trial in the circumstances does not seem to be a possibility. The applicant cannot be made to spend the entire period of trial in custody especially when the trial is likely to take considerable time

7. In case of **Mohd. Muslim v. State (NCT of Delhi) : 2023 SCC OnLine SC 352**, the Hon'ble Apex Court 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 commit 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.”

8. Further, it would be apposite to go through the relevant extract of the case law of **Dheeraj Kumar Shukla (supra)**, wherein the Hon’ble Apex Court observed as under:

“3. It is true that the quantity recovered from the petitioner is commercial in nature and the provisions of Section 37 of the Act may ordinarily be attracted. However, in the absence of criminal antecedents and the fact that the petitioner is in custody for the last two and a half years, we are satisfied that the conditions of Section 37 of the Act can be dispensed with at this stage, more so when the trial is yet to commence though the charges have been framed. .”

9. Further, it would also be pertinent to mention that the Hon'ble Supreme Court in **Man Mandal v. State of W.B., 2023 SCC OnLine SC 1868** granted bail to the petitioners on the ground that they had undergone almost 2 years and the trial is not likely to be concluded in near future. Also, in **Dheeraj Kumar Shukla v. State of V.P., 2023 SCC OnLine SC 918**, the Hon'ble Supreme Court dispensed the rigors of section 37 of NDPS Act and granted bail to the petitioner therein. Relevant para of the said judgment is extracted below:-

"3. It appears that some of the occupants of the 'Honda City' Car including Praveen Maurya @ Puneet Maurya have since been released on regular bail. It is true that the quantity recovered

from the petitioner is commercial in nature and the provisions of Section 37 of the Act may ordinarily be attracted. However, in the absence of criminal antecedents and the fact that the petitioner is in custody for the last two and a half years, we are satisfied that the conditions of Section 37 of the Act can be dispensed with at this stage, more so when the trial is yet to commence though the charges have been framed."

10. Considering the aforementioned circumstances and taking into the fact that accused is in custody since 15.03.2022 i.e. for more than 3 years, and that charge has been framed and further, it is unlikely that trial will be concluded in near future and also, no previous involvement of applicant/accused has been shown by the prosecution, I deem it fit to grant bail to accused Saraswati, on his furnishing personal bond with surety bond of Rs. 50,000/- with one surety in the like amount each, subject to following conditions:

i) The applicant/accused shall not leave the country without the prior permission of the court;

ii). The applicant shall provide her permanent address to the court. The applicant shall intimate the court by way of an affidavit and to the IO regarding any change in the residential address;

iii) The applicant shall appear before the court as and when the matter is taken up for hearing;

iv) The applicant shall also furnish her mobile numbers and mobile numbers of her surety to the IO concerned, which shall be kept in a working condition at all times and shall not be switched off or changed without prior intimation to the IO

concerned.

v) The applicant shall not communicate with or come in contact with any of the prosecution witnesses or tamper with the evidence of the case while being released on bail.

vi). In case the applicant is found to be involved in future in any other similar case, the State shall be at liberty to seek cancellation of bail granted to her by this court.

11. Needless to say, the above-mentioned observations are predicated solely on the facts as alleged, and brought forth at this juncture, and are not findings on merits, and would also have no bearing on the merits of the case. With these conditions, and observations, the regular bail application stands disposed of.

12. In compliance of **Sanjay Singh Vs. State (Govt of N.C.T of Delhi) Writ Petition Criminal 974/2022**, copy of this order be sent to concerned Jail Superintendent to convey the order to inmate.

13. Copy of this order be given dasti.

(Dr. TARUN SAHRAWAT)
ASJ-04 + Spl. Judge (NDPS),
South East District, Saket Court,
New Delhi /23.04.2025