

**IN THE COURT OF SANDEEP YADAV
SPECIAL EXCLUSIVE COURT/SPECIAL JUDGE NDPS-07, ROUSE
AVENUE COURT, NEW DELHI**

I.A. No. 5/26
SC No. 361/2023
Case No. VIII/13/DZU/2023
u/s. 8, 22, 23 & 29 NDPS Act.

ORDER

25.08.2026.

1. I.A. 5/26 has been filed by accused Nishant Kumar under Section 483 Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) for grant of regular bail in case No. VIII/13/DUZ/2023 under Section 8, 22, 23 & 29 NDPS Act.

2. Prosecution version emerging from the complaint filed by Mr. Sunil Kumar Pandey, Junior Intelligence Officer, NCB, Delhi Zonal Unit may be briefly noted down as under :-

3. Pursuant to secret information, one parcel bearing AWB no. 3806155253 destined to Jessica Andrew, Australia was booked at DHL Express Pvt. Ltd. 71/3, Rama Road, Najafgarh Industrial Area near Kirti Nagar, Delhi on 03.04.2023. Search of the parcel revealed that it was concealing 1.016 kilograms Amphetamine. The aforesaid drug recovered from the parcel and documents annexed therewith were seized in the presence of independent witnesses. As per the details given in the invoice annexed with the parcel, consignor was Nishant Kumar, S/o. Sh. Dinesh Kumar, R/o. RZH-145, Gali No. 5, Raj Nagar, Part 2, Palam Colony, New

Delhi-110077 (applicant herein) and the consignee was Jessica Andrew, Unit 7/6, Shipley Place, Westminster, WA 6061, Australia. Thereafter, in pursuance of notice being served under Section 67 NDPS Act and on the basis of recovery and facts disclosed by him in his statement, applicant/accused Nishant Kumar was arrested on 07.04.2023 and grounds of his arrest were explained to him. Applicant/accused in his statement also gave information about one more parcel stated to be containing contraband to be identified by him. Disclosure statement of applicant/accused led to interception of another parcel tracking no. EE197523155TH which was examined at 6th Floor, C.E.D. (L), Foreign Post Office, near ITO, New Delhi on 08.04.2023 and heroin weighing 355 grams was recovered from the said parcel. As per the disclosure statement of applicant/accused, aforesaid parcel was to be handed over to one Nigerian person/lady near Sulabh International Area at Palam at about 1530 hours on 10.04.2023 as per the instructions of his handler Richard. On 10.04.2023, NCB, Delhi Zonal Unit team reached near Sulabh International Area, Palam at about 1510 hours, mounted surveillance and started waiting for person who had to come to collect the parcel. At about 1630 hours, one person contacted the applicant/accused and at this point of time, NCB team members also reached near the other person. Mr. Sunil Kumar Pandey, Junior Intelligence Officer, inquired about his name and the said person introduced himself as Salif Bamba (co-accused in the present case). Co-accused Salif Bamba tried to flee from the spot and was stopped from running by NCB team. Co-accused Salif Bamba during preliminary inquiry disclosed that he has come to the spot to receive the drug parcel from applicant/accused Nishant Kumar as per the directions of his handler Richard and was further required to hand over the parcel to NnaokpanNwankwa (erstwhile third accused

who was discharged vide order dated 07.07.2026). Co-accused Salif Bamba took NCB team to the kitchen of NnaokpanNwankwa who was also arrested subsequently. After completion of investigation, complaint under Section 8, 21, 22, 23 & 29 NDPS Act was filed by NCB against Nishant Kumar (applicant herein), Salif Bamba and NnaokpanNwankwa.

4. Arguments addressed at Bar by Mr. Ratnesh Deo, Id. Special Public Prosecutor for NCB as well as Mr. Anand Kumar, Id. Counsel for applicant/accused, were heard at length. Applicant/accused Nishant Kumar seeks bail mainly on the following grounds :-

(a) There is neither any recovery of any narcotic drugs or psychotropic substance from applicant/accused or from the conscious possession of applicant/accused.

(b) Role of applicant/accused was that of consignor who was unaware of goods which he was booking in the parcel. Reliance in this regard is placed on various whatsapp chats exchanged between applicant/accused and one Richard.

(c) Applicant/accused has no knowledge of the contraband and was merely used as a conduit by his employer taking advantage of vulnerable economic condition and age of applicant/accused.

(d) Applicant/accused has undergone incarceration of more than three years and there is no possibility of conclusion of trial within the

reasonable time and in case of prolonged incarceration, rigors of Section 37 NDPS Act will not apply.

(e) Prosecution has violated mandatory safeguard of Section 42 NDPS Act.

5. Prosecution filed detailed reply to the bail application and vehemently opposed the same.

6. In the arguments as well as in the application, main version/defence of applicant/accused is that applicant/accused was only a consignor of parcel and was totally unaware of contents of parcel. Applicant/accused heavily relied upon the whatsapp chats exchanged between him and Richard. To buttress his point that he was not knowing about the fact that parcel was containing any contraband material, prints out of certain whatsapp chats have been annexed with the bail application. In these whatsapp chats, applicant/accused is expressing his concern and apprehension of being arrested in case the parcel is found to contain contraband material. Mr. Anand Kumar, Id. Counsel for applicant/accused, submitted that it is clear from this concern of applicant/accused that applicant/accused was totally innocent while receiving and booking the parcel with the courier agency.

7. Mr. Ratnesh Deo, Id. Special Public Prosecutor for NCB, took the Court through subsequent whatsapp chats to highlight that applicant/accused was very much aware of the exact contents of the parcel. In whatsapp chats exchanged between applicant/accused and Richard at 11:07 PM & at 11:09 PM on 04.04.2023, applicant/accused is telling

Richard that if anything wrong is found with the parcel, applicant/accused will take it on himself.

8. In one of the whatsapp chats exchanged between applicant/accused and Richard on 05.04.2023 at 8:18 AM, applicant/accused is asking Richard to send some lady as he needs some money and he will do this job. It is, therefore, obvious that despite knowing that the parcel being sent by Richard contained contraband material, applicant/accused expressed his willingness to continue to work with Richard. Furthermore, in the subsequent whatsapp chats exchanged between applicant/accused and Richard on 06.04.2023 at 8:12 AM, applicant/accused is asking Richard about new job. This clearly establishes that applicant/accused was conscious of contents of the parcel being sent by Richard.

9. It has also surfaced during investigation that applicant/accused gave alternate address of his acquaintance/friend Satvik for receiving contraband from abroad. Investigation also revealed that applicant/accused told his friend Satvik that he needs his address as he is not having good relations with his grand father. If applicant/accused was innocent and had no knowledge of contents of the parcel containing the contraband, it is inconceivable that his family members including his grand father would have any objection on receiving the parcel at their address if applicant/accused was earning some money legally in that process. The fact that applicant/accused gave address of his friend Satvik for receiving the parcel further shows that applicant/accused was having conscious knowledge of contents of the parcel containing contraband material.

10. Reading of whatsapp chats dated 22.02.2023 at 9:45 PM exchanged between applicant/accused and Richard and previous whatsapp chats will be interesting as in those whatsapp chats applicant/accused is telling about the alternate address of his friend Satvik and that Richard can use both the address.

11. Section 35 of NDPS Act provides that *in any prosecution for an offence under this Act which requires a culpable mental state of accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect of the Act charged as an offence in that prosecution.*

12. Therefore, there is a statutory presumption that accused was having conscious knowledge of contraband material being contained in the parcel which was booked by him with the courier agency. Applicant/accused tried to dislodge this presumption on the basis of selected whatsapp conversations relied upon by prosecution. However, statutory presumption cannot be rebutted by selective reading of whatsapp conversations. Reading of complete whatsapp conversations would show that applicant/accused not only expressed his willingness to take the blame upon himself in case the parcel is found to contain contraband material, but also agreed to continue to work with Richard in future. Therefore, overall perusal of whatsapp conversations relied upon by prosecution does not establish that applicant/accused was unaware of contents of the parcel being booked by him.

13. Mr. Anand Kumar, Id. Counsel for applicant/accused, submitted that as per the case of prosecution, applicant/accused used his genuine adhar card while booking the parcel with the courier agency and a person with criminal mind will not do so. This arguments has no legs to stand on as a person while indulging in criminal activities can very well try to shield the criminal activities with semblance of innocence.

14. Applicant/accused alongwith co-accused has been charged under Section 21 (c), 22 (c), 23 (c) & 29 NDPS Act vide order dated 24.08.2026 and prosecution witnesses are yet to be examined. Therefore, at this stage there are no reasonable grounds before the Court to believe that applicant/accused is *prima facie* not guilty of the offence charged and therefore rigors of Section 37 NDPS Act will apply to disentitle applicant/accused from grant of bail.

15. From the above discussion, it is amply clear that applicant/accused is not entitled to bail. Accordingly, the application bearing I.A. No.5/26 filed by applicant/accused Nishant Kumar under Section 483 Cr.PC for grant of bail is dismissed. *Dasti*.

(SANDEEP YADAV)
SEC/Spl. Judge NDPS-07,
RACC, New Delhi/25.08.2026