



\$~J-1

* IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment reserved on: 16.12.2025

Judgment delivered on: 12.02.2026

+ BAIL APPLN. 1453/2025

KASHIF

.....Petitioner

Through: Mr. Akshay Bhandari with Ms. Megha Saroa, Mr. Anmol Sachdeva, Mr. Kushal Kumar, Mr. Janak Raj Ambavat & Mr. Moin Khan, Advs.

versus

NARCOTIC CONTROL BUREAURespondent

Through: Mr. Arun Khatri, Sr. Standing Counsel for NCB with Ms. Shelly Dixit, Ms. Tracy Sebastian and Mr. Devender Singh, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J

1. The present petition has been filed seeking regular bail in connection with FIR No. NCB Crime No. VIII/19/DZU/2022 registered at Police Station Narcotics Control Bureau [in short "NCB] under Sections 8/22 (c)/23(c)/29 of NDPS Act, 1985.

2. As per the prosecution version, an information was received by Junior Intelligence Officer [in short "JIO"] of NCB/respondent, Sunil Kumar, whereby it was stated that the parcel bearing AWB No. 7702909491 is lying at DHL Express Pvt. Ltd. Rama Road, Kirti Nagar, New Delhi and was suspected to contain psychotropic substance and in relation thereto the said officer informed the Superintendent, Sh. Amit Kumar Tiwary who directed



another officer Anoop Kumar (HO) to take necessary action.

3. In pursuance of the above said directions, a team was constituted and on the same day at around 3pm the team departed from NCB office and reached DHL office at around 3:40 pm. Thereafter, at DHL Express office the team disclosed the information to the Supervisor, Mr. Ankur Singh who joined the team as independent witness.

4. The said parcel was opened in which 11 lace rolls and 3 pieces of clothes were found. After checking, one lace roll it was found to contain 120 strips of Tramadol tablets; 10 tablets in each strip. The remaining lace rolls were examined and led to the discovery of total 13200 strips of Tramadol tablets. The panchnama was prepared on the spot i.e., 24.02.2022. The contraband was seized, sealed and deposited in the Malkhana on 24.02.2022. On 25.02.2022, the JIO, Anoop Kumar submitted the seizure report.

5. On 24.02.2022, during the course of enquiry, the above said officials got the information from the owner of the DHL office that the said parcel was booked through a firm OGS Groups by one of the accused, Ganesh Chaudhary. He was apprehended on 25.02.2022 by the team of the respondent.

6. On the basis of the disclosure statement of Ganesh Chaudhary, on 28.02.2022, second seizure was made at UPS Express Pvt. Ltd., Delhi from the consignment number IZ98X1W70451682510 where recovery of 15000 Zolpidem tablets was made. Further, on 02.03.2023, on the basis of Ganesh Chaudhary's disclosure statement, a recovery of 19440 Tramadol tablets was made from 3 packages at Global India Express Pvt. Ltd., Mahipalpur, New Delhi.



7. Ganesh Chaudhary disclosed that the said parcels have been booked by him for USA on the directions of co-accused Tamir Ali and petitioner and that both of them are residents of Lucknow. Further, co-accused Tamir Ali was arrested.

8. On 06.03.2022, on initial enquiry, co-accused Tamir Ali allegedly disclosed that his three other associates namely, the present petitioner i.e., Kashif, and co-accused Rizwan and Zahid, who were also involved in sending NRx Tablets to USA, have gone to Himachal on tour and also disclosed they are travelling in a Creta car and will return to Lucknow from Himachal via Delhi in the night of 06.03.2022. Consequently, the petitioner was arrested near Jewar Toll Plaza on 07.03.2022.

9. On 07.03.2022 the petitioner tendered his voluntary statement under section 67 of the NDPS Act, in which he stated that he was involved in sending the parcel containing psychotropic substances to co-accused Ganesh Chaudhary via bus and also provided the address of the consignee on whatsapp to co-accused Ganesh Chaudhary.

10. Mr. Akshay Bhandari, learned counsel appearing on behalf of the petitioner, submits that the case of the prosecution is predicated upon three distinct recoveries effected from courier facilities:

- (i) The first recovery from DHL Express Private Limited, comprising a total of 13,200 Tramadol tablets;
- (ii) The second recovery from UPS Express Private Limited, comprising a total of 15,000 Zolpidem tablets; and
- (iii) The third recovery from Global India Express Private Limited, comprising a total of 19,440 Tramadol tablets.



11. He submits that out of the aforesaid three recoveries; the first recovery is pressed against the co-accused Tamir Ali on the basis of the disclosure statement of co-accused Ganesh. Similarly, the third recovery is alleged against the petitioner and co-accused Tamir Ali, solely on the basis of the disclosure statement of the said co-accused Ganesh.

12. He submits that the respondents have vehemently argued regarding the second recovery of 15,000 Zolpidem tablets, placing reliance on the alleged voluntary disclosure statement of the petitioner regarding the same. Elaborating on the allegations *qua* the said second parcel/recovery, he submits that the prosecution alleges that the order for the said parcel was placed by one Mohd. Zahid Khan, who purportedly transferred a sum of Rs. 80,000/- to the petitioner. It is further alleged that in order to arrange for the said consignment, the petitioner contacted one Aqib Ali, and subsequently, the said parcel was delivered to co-accused Ganesh via a bus along with cash of Rs. 60,000/- kept inside the parcel, for further transmission to abroad.

13. Mr. Bhandari submits that, except for the disclosure statements, there exists no independent evidence/witness on record to substantiate that any such order was ever placed with the petitioner by the co-accused Mohd. Zahid Khan. Furthermore, there is no evidence, save for the disclosure statements of the petitioner, to establish that the said tablets were procured by the petitioner from the co-accused Aqib Ali. He submits that it is pertinent to mention that no bus driver has been examined by the prosecution to establish that the parcel was indeed handed over by the petitioner for delivery to co-accused Ganesh.



14. He further submits that, the amount of Rs. 80,000/-, which is recorded to have been received from co-accused Mohd. Zahid Khan on 26.02.2022 and which forms the basis for alleging financial links between the co-accused and the petitioner, was received wholly for a bona fide purpose, namely, on account of the petitioner's sister's wedding, and not for any illicit transaction.

15. He further submits that the any reliance on the alleged data, extracted for forensic analysis from the seized mobile phone is a matter of trial and the same cannot be used as a ground for rejecting bail.

16. He further submits that no recovery of any contraband has been effected from the personal possession of the petitioner herein. The entire case of the prosecution is sought to be built solely on the basis of the disclosure statements of the petitioner himself and of the co-accused persons, which are inadmissible.

17. Furthermore, he submits that the petitioner has clean antecedents with no prior criminal involvement. It is also pointed out that whenever the petitioner was released on interim bail, his conduct was satisfactory, and he has never misused the liberty granted to him or violated any bail conditions.

18. In addition to the above, Mr. Bhandari invites the attention of this Court to the nominal roll to buttress his contention regarding the long period of incarceration. He submits that the petitioner has been incarcerated for more than two years. He contends that the trial is moving at a snail's pace; the prosecution has cited as many as 31 witnesses, yet till date, only two witnesses have been examined. He submits that the delay in the trial is not attributable to the petitioner, except for two occasions where adjournments



were sought on his behalf. In stark contrast, the matter was adjourned on 11 occasions either on account of the witnesses not being present or for other reasons attributable to the prosecution.

19. He places reliance on the decisions in *Rabi Prakash v State of Odisha, 2023 SCC Online SC 1109*; *Naeem Ahmed @Naim Ahmad vs Govt of NCT of Delhi 2024 SCC Online SC 220*; *Man Mandal vs State of West Bengal, 2023 SCC Online SC 1868*; *Jitender Jain vs NCB & Anr, 2022 SCC Online SC 2021*.

20. Mr. Arun Khatri, learned Senior Standing Counsel appearing for the NCB, has opposed the petition, arguing on the lines of the Status Report. He submits that the investigation in the present matter, has led to the discovery of a syndicate involved in the trafficking of narcotic drugs and psychotropic substances in commercial quantities, leading to recoveries on three distinct occasions, namely, 24.02.2022, 28.02.2022, and 02.03.2022.

21. He submits that the modus operandi adopted by the accused persons involved dispatching these contraband tablets via reputed courier companies in India using fake identities, with the ultimate objective of exporting the same to USA.

22. He submits that the first seizure effected on 24.02.2022 led to the apprehension of co-accused Ganesh Chaudhary, whose statement was subsequently recorded. In his disclosure statement, the said co-accused categorically stated that the intercepted parcel had been sent from Lucknow by co-accused Tamir Ali.

23. He further submits that co-accused Ganesh Chaudhary made further disclosure statements regarding other consignments of NRx drugs that were



booked by him for shipment to USA, acting on the specific directions of the petitioner and co-accused Tamir Ali. These consignments were lying at the facilities of UPS Courier and Global India Courier Company. Acting upon this, subsequent two recoveries were effected. Furthermore, pursuant to the disclosure statement of co-accused Ganesh Chaudhary, co-accused Tamir Ali was arrested on 05.03.2022.

24. He submits that subsequently, based on the disclosure statement made by co-accused Tamir Ali post his arrest, the whereabouts of the petitioner were traced, leading to petitioner's arrest on 07.03.2022

25. Upon his arrest, the petitioner tendered a voluntary statement under Section 67 of the NDPS Act, wherein he revealed that he had asked co-accused Ganesh Chaudhary to work with him for booking and dispatching NRx tablets to foreign countries. He further disclosed that he had promised to pay a substantial amount of money for these services, to which co-accused Ganesh Chaudhary had agreed.

26. He further submits that the petitioner, in his voluntary disclosure statement, made a specific disclosure regarding the second recovery effected on 28.02.2022 at UPS Express Pvt. Ltd. The petitioner admitted that an order for 15,000 Zolpidem Tablets was placed with him by co-accused Mohd. Zahid Khan, who also transferred a sum of Rs. 80,000/- to the petitioner's bank account on 26.02.2022 for the said purpose. He further disclosed that to fulfill this order, he had engaged co-accused Aqib Ali to supply the tablets, which were procured from the local market. Thereafter, the parcel was dispatched by the petitioner to the co accused Ganesh Chaudhary via bus from Lucknow, with Rs. 60,000/- in cash concealed



inside the parcel for the purpose of booking the shipment to USA.

27. He submits that the petitioner has stated in his disclosure statement, that he has shared crucial details, including bus numbers, contact details of bus conductors, consignee particulars, and parcel details, via WhatsApp, to the co accused Ganesh Chaudhary, thereby enabling him to collect and book the parcels. He further submits that there exists substantial electronic evidence in the form of WhatsApp chats, CDRs, and financial records to corroborate the conspiracy and the petitioner's active involvement therein.

28. I have heard the learned counsel for the parties at length and have carefully perused the material placed on record.

29. The allegations against the petitioner is with regard to his purported involvement in a syndicate engaged in the illicit trafficking of psychotropic substances, namely Tramadol and Zolpidem in commercial quantity, to USA via courier services. The prosecution's case against the petitioner is primarily anchored on the recovery of 15,000 Zolpidem tablets from UPS Express Pvt. Ltd., which is sought to be linked to him through disclosure statements, a financial transaction of Rs. 80,000/-, and alleged digital evidence.

30. At the outset, it is pertinent to observe that while considering an application for bail, this Court is not expected to conduct a roving inquiry into the evidence or to conduct a mini-trial. The Court is required to examine the material on record only to form a *prima facie* opinion as to whether there are reasonable grounds to believe that the accused is not guilty of the offence and whether he is likely to commit any offence while on bail, as mandated under Section 37 of the NDPS Act.



31. In the present case, it is an admitted position that no recovery of any contraband has been effected from the personal or conscious possession of the petitioner. The recoveries were made from the premises of third-party i.e. courier companies upon the disclosure statements of the co – accused Ganesh Chaudhary.

32. As regards the complicity of the petitioner, the prosecution relies heavily upon the disclosure statements of the co-accused persons Ganesh Chaudhary and Tamir Ali and the petitioner's own statement under Section 67 of the NDPS Act. In light of the law laid down by the Hon'ble Supreme Court in *Tofan Singh v. State of Tamil Nadu, (2021) 4 SCC 1*, such statements are inadmissible in evidence and cannot form the sole basis of conviction. The relevant paragraphs of the judgement read as under :-

“155. Thus, to arrive at the conclusion that a confessional statement made before an officer designated under Section 42 or Section 53 can be the basis to convict a person under the NDPS Act, without any non obstante clause doing away with Section 25 of the Evidence Act, and without any safeguards, would be a direct infringement of the constitutional guarantees contained in Articles 14, 20(3) and 21 of the Constitution of India.

156. The judgment in Kanhaiyalal [Kanhaiyalal v. Union of India, (2008) 4 SCC 668 : (2008) 2 SCC (Cri) 474] then goes on to follow Raj Kumar Karwal [Raj Kumar Karwal v. Union of India, (1990) 2 SCC 409 : 1990 SCC (Cri) 330] in paras 44 and 45. For the reasons stated by us hereinabove, both these judgments do not state the law correctly, and are thus overruled by us. Other judgments that expressly refer to and rely upon these judgments, or upon the principles laid down by these judgments, also stand overruled for the reasons given by us.



157. *On the other hand, for the reasons given by us in this judgment, the judgments of Noor Aga [Noor Aga v. State of Punjab, (2008) 16 SCC 417 : (2010) 3 SCC (Cri) 748] and Nirmal Singh Pehlwan v. Inspector, Customs [Nirmal Singh Pehlwan v. Inspector, Customs, (2011) 12 SCC 298 : (2012) 1 SCC (Cri) 555] are correct in law.*

158. *We answer the reference by stating:*

158.1. *That the officers who are invested with powers under Section 53 of the NDPS Act are “police officers” within the meaning of Section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of Section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.*

158.2. *That a statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.”*

(emphasis supplied)

33. Further, regarding the allegation that the petitioner transported the contraband via a bus from Lucknow to Delhi, a *prima facie* perusal of the record reveals that no independent witness, such as the bus driver or conductor, has been interrogated or cited to establish this crucial link in the chain of recovery. The absence of such independent corroboration, at this stage, has the potential of raising doubt about petitioner's complicity.

34. Furthermore, concerning the financial transaction of Rs. 80,000/- received from co-accused Mohd. Zahid Khan, the petitioner has offered an explanation that the same was received for his sister's wedding. At this juncture, in the opinion of the court, whether this amount represents the



proceeds of crime or is a *bona fide* family transaction, in the absence of any cogent evidence, again does not establish the petitioner's complicity in the commission of the offence. Reference in this regard may be had to the decision of a coordinate bench of this court in *Sahil Sharma vs State Govt of NCT of Delhi; 2025 SCC Online Del 8735*, wherein it was observed as under:

"17. Apart from the recoveries, the only material against the applicant is stated to be the financial transactions of the applicant with co-accused. At this juncture, in the opinion of this Court, in the absence of any cogent evidence which establishes that the transactions were for the purpose of dealing in the contrabands, mere monetary transactions do not establish the applicant's complicity in the commission of the offence.

18. Furthermore, it is pointed out that no independent witnesses were joined by the prosecution to corroborate the recoveries and no photography or videography was done either."

35. Similarly, the veracity and evidentiary value of the alleged WhatsApp chats and CDRs are matters to be tested during the course of the trial, as the same are not substantive piece of evidence and can only be used for corroboration. At this stage, the said material cannot be treated as conclusive proof of the petitioner's guilt to deny him the concession of bail.

36. Reliance can be placed on the decision of a coordinate bench of this court in *Vinay Dua vs State Govt of NCT of Delhi; 2025 SCC Online Del 4534*, wherein it was observed as under:

"21. It is argued that there are certain financial transactions and CDR connectivity between the applicants



and co-accused persons. It is also argued that there are certain WhatsApp chats between the applicants and co-accused persons.

*22. Merely because the applicants were in regular touch with the co-accused, the same is not sufficient to establish the offence against the applicants. A coordinate bench of this Court, in the case of *Dalip Singh v. State (NCT of Delhi)*, 2019 SCC OnLine Del 6494, had observed as under:*

“11. On perusal of the record, it is prima facie seen that there are two major missing links in the case of the prosecution. There is no link established by the prosecution between the petitioner with the alleged supplier Manoj. Further the entire case of the prosecution, in so far as petitioner is concerned is circumstantial i.e. based solely on disclosure statement of a co-accused which is per se not admissible without there being any corroboration. Prosecution has not been able to establish any connection between the subject offence and the bank accounts, where the petitioner is alleged to have been depositing money or with the holders of those accounts. Merely because the petitioner has been having telephonic conversation with the co-accused, would not be sufficient to hold that petitioner is guilty of the subject offence. There is no recovery made from the petitioner.

12. I am of the view that requirement of Section 37 of the NDPS Act are satisfied. In so far as the petitioner is concerned, there are reasonable grounds to believe that petitioner is not guilty of the said offence.”

(emphasis supplied)

23. Insofar as the money transactions are concerned, it is contested by the learned counsel for the applicants that the



applicants are pharmacists with valid licenses and the transactions and CDR pertain to fair dealings.

24. Whether the financial transactions between the applicants and accused persons and the WhatsApp chats were in regard to the contraband, can only be ascertained after the entire evidence is led.

25. This Court does not deem it apposite to comment extensively on the merits of the case when the charges are yet to be framed, however, in the absence of any substantial corroboration lending credence to the disclosure statements, the applicants have been able to establish a *prima facie* case for grant of bail. It is undisputed that the applicants have clean antecedents. In view of the above, this Court is of the opinion that the embargo of Section 37 of the NDPS Act does not come in the way of granting bail to the applicants.”

37. Reference may also be had to the decision of this court in *Vikas Bharti vs State Govt of NCT of Delhi; in 2025 SCC Online Del 1595*, wherein it was observed as under:

“19. As regards CDRs, suffice it to say that the same are not substantive piece of evidence and can only be used for corroboration.

20. There is also some substance in the submission of Mr. Bhandari that location chart does not conclusively establish petitioner's presence at the place of incident at the time of incident.”

38. In view of above, this Court is satisfied that there are reasonable grounds to believe that the petitioner is not guilty of the alleged offence. Further, it is not the case of the prosecution that the petitioner has previous



involvement. Even the nominal roll reveals that the petitioner does not have any criminal antecedents. Therefore, the Court is of the view that if the petitioner is enlarged on bail, he is not likely to commit any offence.

39. Furthermore, this Court cannot be unmindful of the period of incarceration. The petitioner was arrested on 07.03.2022 and has been in custody for more than two years as per the nominal roll. It is a matter of record that out of 31 cited witnesses, only 2 witnesses have been examined till date. The trial is evidently proceeding at a snail's pace, with no possibility of its culmination in near future and the delay cannot be attributed to the petitioner.

40. The Hon'ble Supreme Court in ***Man Mandal & Anr. vs State of West Bengal, 2023 SCC Online SC 1868***, and ***Jitender Jain vs NCB & Anr, 2022 SCC Online SC 2021***, wherein commercial quantity was involved has held that bail should be granted in cases of prolonged incarceration, were trial is not going to conclude soon in the near future. Relevant part of the decision in ***Man Mandal*** (Supra) reads thus:

“5. Learned counsel appearing for the State submitted that in view of the statutory restrictions under Section 37 of the NDPS Act and the quantity being commercial in nature, the present special leave needs to be dismissed.

6. Taking into consideration the fact that the petitioners have been incarcerated for a period of almost two years and the trial is not likely to be taken up for hearing in the immediate near future, we are inclined to grant bail to the petitioners.”

41. Relevant part of the decision in ***Jitendra Jain*** (supra) also reads thus:

“2. We have heard learned counsel appearing appearing on



behalf of the petitioner as well as learned Additional Solicitor General appearing on behalf Respondent No. 1.

3. Though it is a case of commercial quantity and allegations levelled against the petitioner are serious in nature, but having regard to the fact that he is in custody for 2 years and conclusion of trial will take time, we are inclined to release the petitioner on bail.

4. The petitioner is, accordingly, ordered to be released on bail, subject to his furnishing bail bonds to the satisfaction the trial court.”

42. Likewise, in *Naeem Ahmed Alias Naim Ahmad vs. Govt. of NCT of Delhi, 2024 SCC OnLine SC 220*, the Hon'ble Supreme Court granted bail to the accused from whom commercial quantity of contraband was recovered, having regard to his custody of 01 year and 11 months, the fact that the accused had no criminal antecedents and that the conclusion of trial would take time. The relevant paras of the decision reads as under:

“8. It is informed by learned counsel for the parties that the appellant has, as on date, spent more than 01 year and 11 months in custody. The investigation is complete but framing of the charges is yet to be done. The conclusion of trial will thus take time. There are no criminal antecedents.

9. It is a seriously debatable question of fact whether the appellant was also found in the conscious possession of the contraband (smack). But such a question of fact will obviously be determined by the Trial Court at an appropriate stage. That being so, it seems to us that as of now, the twin test of Section 37 of the Act, need not be invoked against the appellant.

10. Taking into consideration the totality of the circumstances, especially the period of custody undergone by the appellant however, without expressing any views on the merits of the case, the appeal is allowed. Accordingly, the appellant is ordered to be



released on bail subject to his furnishing the bail bonds to the satisfaction of the Trial Court."

(emphasis supplied)

43. In view of the above, the petitioner is admitted to regular bail in connection with NCB Crime No. VIII/19/DZU/2022, subject to his furnishing a personal bond in the sum of Rs. 50,000/- with one surety of the like amount to the satisfaction of the learned Trial Court, and further subject to the following conditions:

- (a) The petitioner shall not leave the country without the prior permission of the Trial Court;
- (b) The petitioner shall appear before the Trial Court on every date of hearing;
- (c) The petitioner shall not directly/indirectly try to get in touch with any prosecution witness or tamper with the evidence.
- (d) The petitioner shall provide his mobile number to the Investigating Officer (IO) and keep it operational at all times.

44. It is clarified that nothing mentioned above shall be construed as expression of opinion on the merits of the case.

45. The petition stands disposed of in the above terms.

46. Copy of the order be forwarded to the concerned Jail Superintendent for necessary information and compliance.

VIKAS MAHAJAN, J

FEBRUARY 12, 2026

N.S. ASWAL