



2026:DHC:23



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on:23.12.2025

Judgment pronounced on:05.01.2026

+ **BAIL APPLN. 3059/2025**

LAKSHAY JAIN

.....Applicant

versus

STATE GOVT. OF NCT OF DELHI

..... Respondent

Advocates who appeared in this case:

For the Applicant : Mr. Viraj Datar, Senior Advocate with Mr. Ashutosh Lohia, Ms. Shraddha Bhargava and Ms. Mansi Rose Taneja, Advocates.

For the Respondent : Mr. Ritesh Kumar Bahri, APP for the State with SI Rohit, PS ANTF/Crime Branch.

CORAM

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present application is filed seeking regular bail in FIR No. 205/2023 dated 22.08.2023, registered at Police Station Crime Branch for offences under Sections 20/22/25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS').

2. Succinctly stated, it is alleged that on 22.08.2023, on the basis



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of secret information, one Sahil Sharma @ Maxx was apprehended from his grey car bearing No. HR 10 AM 5324, and during search, 1200 grams of Charas, 200 grams of MDMA and 2580 grams of Ganja/Cannabis, was recovered from his possession.

3. Hence, the accused/Sahil was arrested and the subject FIR was registered. Thereafter, on his instance, 52 grams of MDMA@ecstasy was recovered from his flat No. 2408, Habitech, Panchtatva.

4. It is alleged that at the instance of accused/Sahil, 06 riders who allegedly used to deliver contraband, were arrested on 23.08.2023. Allegedly, 53 grams of Ganja and 1.87 grams of MDMA (Amphetamine) was recovered from one Sonu Sharma, while 54 grams of Ganja and 2 grams of MDMA (Amphetamine) was recovered from one Chandan Kumar Mehto. Upon disclosure of accused/Sahil, his alleged source of Ganja from North-east namely L. Jicko Meitei, was arrested and 4 kg of Ganja was recovered from his possession.

5. It is alleged that the accused/Sahil and another co-accused/Tanay Khatri disclosed that one Anand Singh @ Andy used to organise events/parties and facilitated the supply/delivery of contraband among peddlers and suppliers. Consequently, the Accused/Anand Singh @ Andy was thereafter arrested on 01.10.2023.

6. It is the case of the prosecution that during investigation, the said co-accused Anand Singh @ Andy disclosed that he procured contraband from the Applicant/Lakshay Jain and used to deliver it to Sahil, Tanay Khatri and others. Anand Singh @ Andy further



disclosed that the payment of the contraband, purchased from the Applicant/Lakshay Jain was made in the account of Vardhman Export, whose proprietor allegedly is the Applicant herein.

7. It is further the case of the prosecution that during investigation, accused/Sahil also disclosed that he used to deposit payments in the account of Vardhman Export for purchase of drugs.

8. Hence, the Applicant/Lakshay Jain was thereafter arrested from Goa on 09.10.2023. Allegedly, three tracking ids were found in the phone of the Applicant, on the basis of which two parcels containing 112 grams of Cannabis/Ganja each, were seized at FPO, Delhi and a third parcel containing 105.7 grams of Cannabis/Ganja was seized at FPO, Mumbai. Thus, total 329.7 grams of Cannabis/Ganja has been recovered at the instance of the Applicant.

9. After investigations, the charge-sheet was filed under Section 20/29 of the NDPS Act.

10. The Applicant herein had first approached the learned Trial Court by way of a Bail Application seeking regular bail, which was dismissed *vide* Order dated 25.04.2024. Thereafter, the Bail Application No. 1615/2024 filed by the Applicant, before this Court, seeking regular Bail, was dismissed *vide* Order on merits dated 22.10.2024.

11. The Applicant herein again approached the learned Trial Court again by way of a Bail Application under section 483 of the BNSS, and the said Application was dismissed *vide* Order dated 22.07.2025.

12. The learned counsel for the Applicant, at the outset, has



submitted that the present bail application, preferred on behalf of the Applicant is maintainable. He has submitted that successive bail applications can be filed despite the dismissal of previous bail applications if there is a change in circumstance.

13. He has submitted that though more than one year has elapsed since the first bail application was dismissed by this Court *vide* order dated 22.10.2024, however, yet the trial has not commenced, which entitles the Applicant to seek bail by preferring a fresh application.

14. He has further submitted that though no contraband was recovered from the possession of the Applicant and even the alleged recovery of 329.7 grams of Cannabis/Ganja is of a small quantity, yet he has spent more than 2 years in custody, which exceeds the maximum punishment prescribed for the alleged offence.

15. He has further submitted that out of 11 accused, 7 have already been granted Bail and thus, the Applicant is also entitled to be released on regular bail on the ground of parity. After passing of the Order dated 22.10.2024, the main accused Sahil Sharma, Sonu Sharma, Chandan Kumar Mehto as well as L. Jicko Metei, from whose possession alleged recoveries were effectuated during search, have also been granted Bail.

16. He has further submitted that the Applicant has also been suffering from various medical ailments and has been released on interim Bail on medical grounds from 27.11.2024 to 14.06.2025, and he has surrendered on time and has not misused the liberty granted.

17. He has consequently prayed that in view of the changed



circumstance of the delay in trial and the grant of bail to main accused persons, the Applicant be enlarged on regular bail.

18. *Per contra*, the learned Additional Public Prosecutor vehemently opposed the grant of any relief to the Applicant who is allegedly the source of hybrid Cannabis. He has submitted that the total recovery in the present case is of commercial quantity and there are incriminating financial transactions between the Applicant and other co-accused persons. The Applicant does not have clean antecedents and has total five previous involvements including two for offences under the NDPS Act and thus, the previously filed bail applications of the Applicant have been rightly dismissed on merits.

19. He has further submitted that no fresh ground has been raised so as to merit interference by this Court while considering the present application. He consequently submitted that the application preferred by the Applicant be dismissed.

20. Submissions heard and the material placed on record perused.

Analysis

21. 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 in the event of conviction; 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, the period of incarceration is also a relevant factor that is to be considered.

22. It is unequivocally established that, to be granted bail, the accused charged with offence under the NDPS Act must fulfil the conditions stipulated in Section 37 of the NDPS Act. Section 37 of the NDPS Act reads as under:

“37. Offences to be cognizable and non-bailable.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)—
(a) every offence punishable under this Act shall be cognizable;
(b) no person accused of an offence punishable for offences under Section 19 or Section 24 or Section 27-A and also for offences involving commercial quantity shall be released on bail or on his own bond unless—
(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and
(ii) where the Public Prosecutor oppose the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail. (2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974), or any other law for the time being in force, on granting of bail.”

23. At the outset, it is required to be noted that the present application is a second application seeking regular bail, after dismissal of the earlier bail application by this Court *vide* order dated 22.10.2024.

24. Insofar as the maintainability of the present application is concerned, it is well settled that though successive bail applications are not barred, the same can be entertained only upon a demonstrable change in circumstances, which was not available or considered at the



time of dismissal of the earlier application. The Hon'ble Apex Court in the case of **Prasad Shrikant Purohit v. State of Maharashtra : (2018) 11 SCC 458**, held as under :

“30. Before concluding, we must note that though an accused has a right to make successive applications for grant of bail, the court entertaining such subsequent bail applications has a duty to consider the reasons and grounds on which the earlier bail applications were rejected. In such cases, the court also has a duty to record the fresh grounds which persuade it to take a view different from the one taken in the earlier applications.”

25. Fresh consideration of a bail application requires a material change in circumstances and filing of successive bail applications without any substantive change is strongly discouraged. As a general principle, issues that have already been adjudicated cannot be revisited on the same grounds. Doing so risks creating speculation, uncertainty in the administration of justice, and may encourage forum shopping. The Hon'ble Apex Court, in **Kalyan Chandra Sarkar v. Rajesh Ranjan and Another : (2005) 2 SCC 42**, emphasized that while considering a subsequent bail application, the court must evaluate the reasons for the rejection of the earlier application. Only after such consideration, and if the court is satisfied that bail should be granted, it must provide specific reasons justifying why the subsequent application is being allowed despite the earlier denial. The relevant excerpt from the judgment reads as follows:

“19. The principles of res judicata and such analogous principles although are not applicable in a criminal proceeding, still the courts are bound by the doctrine of judicial discipline having regard to the hierarchical



system prevailing in our country. The findings of a higher court or a coordinate Bench must receive serious consideration at the hands of the court entertaining a bail application at a later stage when the same had been rejected earlier. In such an event, the courts must give due weight to the grounds which weighed with the former or higher court in rejecting the bail application. Ordinarily, the issues which had been canvassed earlier would not be permitted to be reagitated on the same grounds, as the same would lead to a speculation and uncertainty in the administration of justice and may lead to forum hunting.

20. The decisions given by a superior forum, undoubtedly, are binding on the subordinate fora on the same issue even in bail matters unless of course, there is a material change in the fact situation calling for a different view being taken. Therefore, even though there is room for filing a subsequent bail application in cases where earlier applications have been rejected, the same can be done if there is a change in the fact situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete. This is the limited area in which an accused who has been denied bail earlier, can move a subsequent application. Therefore, we are not in agreement with the argument of learned counsel for the accused that in view of the guarantee conferred on a person under Article 21 of the Constitution, it is open to the aggrieved person to make successive bail applications even on a ground already rejected by the courts earlier, including the Apex Court of the country.”

26. This Court, thus, cannot revisit or re-evaluate the issues already decided in the previous bail application and only the subsequent developments can be delved into.

27. A perusal of the Order dated 22.10.2024 reflects that the earlier bail application came to be rejected upon consideration of the applicability of the rigours of Section 37 of the NDPS Act, the allegations levelled under Section 29 of the NDPS Act, the recoveries alleged on the basis of tracking IDs found in the mobile phone of the



Applicant, presence of certain financial transactions between the Applicant and the other co-accused namely – Sahil Sharma and Tanay Khatri and the antecedents attributed to the Applicant. Further, the ground of parity was also declined at that stage, as the co-accused who were enlarged on bail then were found to stand on a different footing, having no recovery effected from them.

28. Concededly, pursuant to the dismissal of bail *vide* order dated 22.10.2024 passed by this Court, the Applicant has admittedly spent more than one year in custody which, in the opinion of this Court, is a ground to move for bail afresh. This approach is consistent with the Hon'ble Apex Court's acknowledgment that prolonged detention can itself be a ground for reconsideration of bail, independent of the earlier dismissal, thereby not constituting a review but rather a fresh consideration under changed conditions. This aligns with the judicial imperative to ensure that detention prior to the trial does not become punitive and is in accordance with the principles of justice and liberty.

29. It is well settled that an accused cannot be kept in custody for an indefinite period of time, and the bail application can be considered on its own merits, even if filed repeatedly. It is trite that every day spent in custody can provide a new cause of action for filing a bail application under certain circumstances. This principle is part of a broader approach emphasizing that the law prefers bail over jail, aiming to balance the rights of the accused with the requirements of the criminal justice system. This leads to the principle that each additional day in custody could potentially alter the circumstances



under which bail is considered, thereby necessitating a fresh evaluation of the bail application.

30. Undisputedly, the Applicant has been in incarceration since 09.10.2023 i.e. for more than two years and despite filling of the chargesheet almost 2 years ago, only charges have been framed till date and the trial has not even commenced. It has also been pointed out that there are 40 witnesses to be examined out of which 28 are official witnesses. Speedy trial in such circumstances does not seem to be a possibility.

31. Hence, the Applicant cannot be made to spend the entire period of trial in custody especially when the trial is likely to take considerable time. It is trite that grant of bail on account of delay in trial and long period of incarceration cannot be said to be fettered by the embargo under Section 37 of the NDPS Act. The Hon'ble Apex Court, in the case of **Mohd. Muslim v. State (NCT of Delhi) : 2023 SCC OnLine SC 352** has observed as under:

*“21....Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (ref. Satender Kumar Antil supra). Having regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail.
22. Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable. Jails are overcrowded and their living conditions, more often than not, appalling. According to the Union Home Ministry's response to Parliament, the National Crime Records Bureau had recorded that as on 31st*



December 2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,069 lakhs in the country. Of these 122,852 were convicts; the rest 4,27,165 were undertrials.

23. The danger of unjust imprisonment, is that inmates are at risk of “prisonisation” a term described by the Kerala High Court in *A Convict Prisoner v. State* as “a radical transformation” whereby the prisoner: “loses his identity. He is known by a number. He loses personal possessions. He has no personal relationships. Psychological problems result from loss of freedom, status, possessions, dignity any autonomy of personal life. The inmate culture of prison turns out to be dreadful. The prisoner becomes hostile by ordinary standards. Self-perception changes.”

24. There is a further danger of the prisoner turning to crime, “as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal” (also see Donald Clemmer's ‘*The Prison Community*’ published in 1940). Incarceration has further deleterious effects - where the accused belongs to the weakest economic strata : immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials - especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily.”

(emphasis supplied)

32. The Hon’ble Apex Court in the case of ***Man Mandal & Anr. v. The State of West Bengal : SLP(CRL.) No. 8656/2023*** had granted bail to the petitioner therein, in an FIR for offences under the NDPS Act, on the ground that the accused had been incarcerated for a period of almost two years and the trial was likely going to take considerable amount of time.



33. The Hon'ble Apex Court in ***Rabi Prakash v. State of Odisha*** : **2023 SCC OnLine SC 1109**, while granting bail to the petitioner therein held as under :

“4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent - State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.”

34. Prolonged incarceration of an undertrial, without commencement of trial, militates against the fundamental right guaranteed under Article 21 of the Constitution of India. The Supreme Court has consistently held that even in cases governed by stringent bail provisions, undue delay in trial and long custody are relevant considerations while adjudicating bail applications.

35. *Secondly*, this Court cannot lose sight of the fact that after the dismissal of the Applicant's earlier bail application, the position of parity has materially altered.

36. It emerges that the role attributed to the Applicant herein was that he had delivered the contraband to Anand Singh who had further supplied the same to Sahil Sharma. As per the status report, it has been emphasized upon that accused Sahil Sharma had transferred



Rs.92,000/- and accused Tanay Khatri had transferred Rs. 59,000/- in the account of Vardhaman Exports, whose proprietor allegedly is the Applicant herein. Further, from his phone, 3 tracking ids were recovered which led to recovery of 329.7 grams of Cannabis/Ganja.

37. It is not disputed that the accused Tanay Khatri and Anand Singh had already been released on Bail when the Applicant's first Bail Application was rejected by this Court. However, since then, the accused Sahil Sharma, from whose possession allegedly substantial quantities of contraband, namely 1200 grams of Charas, 200 grams of MDMA and 2580 grams of Ganja/Cannabis, were recovered, and at whose instance a further recovery of 52 grams of MDMA@Ecstasy was effectuated from his flat at Habitech, Panchtatva, has also been enlarged on regular bail *vide* judgment dated 03.12.2025 passed by this Court in Bail Appln. No. 3068/2025. While granting bail to the above co-accused, as regards the monetary transactions, it has been categorically observed by this Court that without any other cogent evidence, mere financial transactions do not establish that they were for the purposes of dealing in contrabands.

38. When the accused persons, with whom the alleged financial transactions were made, have been released on Bail, in the opinion of this Court, the same transactions cannot be a reason to keep the Applicant in further custody, when there are admittedly no chats or transcripts to establish dealings of contraband by the Applicant with the co-accused persons.

39. Further, while granting Bail to Sahil Sharma, it has been



observed by this Court that there is a discrepancy in identification of the one of the seized contrabands. Though the field-testing kit tested the seized contraband positive for MDMA however, the FSL disclosed the same to be Methamphetamine. It has also been observed that non-joinder of independent witnesses and the absence of photography or videography, though is a subject matter of trial, but the same casts a doubt on the case of the prosecution and the benefit of such lack of corroboration cannot be denied to the accused Sahil Sharma.

40. Hence, when the prosecution has sought to establish that the Applicant is the source of contraband recovered from Sahil Sharma, the benefit of the doubts casted in the case of the prosecution and non-corroboration of the recoveries, cannot be denied to the Applicant herein.

41. Additionally, the co-accused from whose personal possession recoveries were allegedly effectuated namely, Sonu Sharma and Chandan Kumar Mehto have been granted regular Bail by this Court *vide* Order dated 21.11.2025 and co-accused L. Jicko Meitei (*the source of Ganja as disclosed by Sahil Sharma*) from whose possession 4 Kg Ganja was recovered has been enlarged on regular bail *vide* Order dated 10.01.2025.

42. While granting Bail to L. Jicko Meitei, it was observed that the total quantity of *Ganja* assigned to him was 6580 grams i.e. 4 Kg from his possession and 2580 grams recovered from Sahil Sharma allegedly sold to him by L. Jicko Meitei, which is an intermediate quantity.

43. While granting Bail to Sonu and Chandan it was observed that



the contraband recovered from them was of a small quantity.

44. In the case of the Applicant, is also not in dispute that no contraband was recovered from the personal possession of the applicant and that the alleged seizure of 329.7 grams of cannabis/Ganja (*which is a small quantity*) was effected from parcels intercepted at the Foreign Post Office.

45. At this stage, the role attributed to the Applicant stands on a footing no graver than all the co-accused persons and thus, it cannot be said that the Applicant is not entitled to Bail on the ground of parity now.

46. Even the alleged linkage of the said parcels to the Applicant on the basis of tracking IDs found in his mobile phone is a matter to be tested during trial and, at this stage, cannot by itself justify continued incarceration, especially when he has spent more than 2 years in custody.

47. Further, it has not been disputed that the Applicant suffered seizure disorder and was granted interim bail on medical grounds (spine surgery) from 27.11.2024 till 14.06.2025. It is not the case of the prosecution that the Applicant misused the liberty so granted, attempted to flee from justice, or tampered with evidence or influenced witnesses.

48. As regards the rigours of Section 37 of the NDPS Act, this Court is conscious of the statutory embargo. However, the satisfaction contemplated under Section 37 of the NDPS Act is not to be recorded in a vacuum and must be assessed in light of the totality of



circumstances, including length of custody, progress of trial and parity with co-accused.

49. Much emphasis has been laid upon the antecedents attributed to the Applicant. The nominal role reflects that the Applicant has been enlarged on Bail in FIR No. 190/2020 under Section 20 of the NDPS Act, PS Crime Branch and FIR No. 45/2021 under Sections 20/23/29 of the NDPS Act, PS IGI Airport. There is no material placed on record to indicate that the Applicant has misused the liberty granted in any of the said proceedings, or that he has attempted to abscond or interfere with the course of justice.

50. It is trite that prior involvements cannot, by itself, be a ground to deny bail, and that each case must be decided on its own merits, particularly when the accused is not a convict and is already on bail in the said matters. Antecedents, though a relevant factor, cannot be treated as determinative in isolation, and must be weighed in conjunction with other attending circumstances.

51. In the considered view of this Court, the pendency of the aforesaid cases, in which the Applicant is already on bail, does not, in the facts of the present case, come in way of grant of liberty to the Applicant when he has spent significant time in custody.

52. However, appropriate conditions ought to be imposed on the Applicant to allay any apprehension of him tampering with the evidence.

53. The Applicant is, therefore, directed to be released on bail on furnishing a personal bond for a sum of ₹50,000/- with two sureties of



the like amount, subject to the satisfaction of the learned Trial Court, on the following conditions:

- a. The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
 - b. The Applicant shall under no circumstance leave the boundaries of the country without the permission of the Trial Court;
 - c. The Applicant shall appear before the learned Trial Court as and when directed;
 - d. The Applicant shall, after his release, mark his appearance before the concerned IO/SHO once in every week;
 - e. The Applicant shall provide the address where he would be residing after his release to the concerned IO/SHO and shall not change the address without informing the concerned IO/SHO;
 - f. The Applicant shall, upon his release, give her mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.
54. In the event of there being any FIR/DD entry / complaint lodged against the Applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.
55. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not



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influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

56. The bail application is allowed in the aforementioned terms.

57. Pending application(s), if any, also stand disposed of.

AMIT MAHAJAN, J

JANUARY 5, 2026

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