



2026:DHC:4455



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 06.05.2026

Pronounced on: 19.05.2026

Uploaded on: 19.05.2026

+ BAIL APPLN. 1455/2026
SARFARAJ

.....Petitioner

Through: Mr. Ankit Sharma, Advocate.

versus

THE STATE (NCT OF DELHI) & ANR.Respondents

Through: Mr. Tarang Srivastava, APP with
SI Sohan Thakur.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

JUDGMENT

1. By way of the present application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ["BNSS"], the applicant seeks regular bail in connection with FIR No. 194/2023 dated 17.02.2023, registered at Police Station Narela, Outer North District, Delhi, for the offence punishable under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ["the NDPS Act"].

2. I have heard Mr. Ankit Sharma, learned counsel for the applicant, and Mr. Tarang Srivastava, learned Additional Public Prosecutor for the State. The prosecution has filed a status report, which is on record.

A. PROSECUTION CASE

3. The prosecution case, as emerging from the status report, is that, on 16.02.2023, secret information was received to the effect that one Faijan @ Sharukh was involved in the supply of ganja and would deliver a



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consignment thereof to his associate, i.e. the applicant herein. Pursuant thereto, a raid was conducted near Police Colony, Sector A-5, Narela, and at about 07:40 PM, the applicant and co-accused Faijan were apprehended while carrying a heavy white plastic *katta* and a backpack. Notices under Section 50 of the NDPS Act were served upon them, and a search was thereafter conducted.

4. Upon search of the applicant, a heavy white plastic *katta* was recovered from his possession, containing four packets wrapped in khakhi tape and one transparent polythene packet. Upon opening the said packets, a grassy substance was found which, based on its colour, smell, and physical properties, appeared to be *ganja*. The four packets weighed 5.270 kilograms, 5.184 kilograms, 5.560 kilograms, and 5.550 kilograms respectively, while the fifth packet weighed 1 kilogram [including the weight of the polythene]. The recovered *ganja* was thereafter sealed and marked as “X”. Search of co-accused Faijan resulted in the recovery of one packet of *ganja* weighing 5.098 kilograms, which was sealed and marked as “Y”. The accused persons were arrested on 17.02.2023.

5. Upon completion of the investigation, a chargesheet was filed under Sections 20/29 of the NDPS Act.

B. SUBMISSIONS BY LEARNED COUNSEL FOR THE PARTIES

6. In support of the present application, Mr. Sharma submitted that, although the alleged recovery from the applicant comprises a commercial quantity of *ganja*, i.e. 22.564 kilograms, the seizure was neither effected in the presence of any independent witness, nor documented by way of photography or videography. He places reliance upon the judgment of a



coordinate Bench of this Court in *Bantu v. State Govt. of NCT of Delhi*¹, to contend that, in such circumstances, the benefit of doubt, at the stage of consideration of bail, ought to enure to the accused.

7. Mr. Sharma further submitted that the applicant is a person with disability, and has been in custody for over 3 years and 2 months. Co-accused Faijan has been enlarged on bail by the Special Court *vide* order dated 02.06.2023². He submitted that, although prosecution evidence has commenced, only 9 out of 17 witnesses have been examined thus far, and the trial is likely to take considerable time to conclude.

8. Mr. Srivastava, on the other hand, submitted that the total recovery effected in the present case is 27.632 kilograms of *ganja* and, therefore, the rigours of Section 37 of the NDPS Act are attracted. Further, the Forensic Science Laboratory report dated 10.05.2023 confirms the substance to be *ganja*. As regards the photography/videography of the seizure, he submitted that the issue is a matter for trial and does not warrant consideration at this stage.

C. ANALYSIS

9. At the outset, it may be noted that the present case concerns the alleged recovery of a commercial quantity of contraband, being over 20 kilograms of *ganja*. The rigours of Section 37 of the NDPS Act are, therefore, attracted. It is, however, also well settled that the restrictions contained in Section 37 cannot be applied in a manner that defeats the constitutional guarantee under Article 21 of the Constitution. In a series

¹ 2024 SCC OnLine Del 4671 [hereinafter, "*Bantu*"].

² The Special Court noted that the alleged recovery from Faijan was 5.098 kilograms of *ganja*, which falls within the intermediate category, and therefore, the rigours of Section 37 of the NDPS Act were not applicable to him.



of decisions, including *Mohd. Muslim v. State (NCT of Delhi)*³, *Dheeraj Kumar Shukla v. State of Uttar Pradesh*⁴, and *Rabi Prakash v. State of Odisha*⁵, the Supreme Court has emphasised that prolonged incarceration at the pre-trial stage, even in cases under special statutes containing stringent bail conditions, would be violative of the right to life and liberty guaranteed under Article 21 of the Constitution. In *Mohd. Muslim*, the Supreme Court also clarified that the satisfaction contemplated under Section 37 is only *prima facie* in nature, and that the Court is not required, at the stage of bail, to arrive at a finding of the likelihood of guilt of the accused beyond reasonable doubt. More recently, in *State of Punjab v. Sukhwinder Singh @ Gora*⁶, the Supreme Court reiterated that the considerations relevant to Section 37 are required to be assessed holistically, while ensuring that the constitutional protection under Article 21 is not rendered illusory.

10. Applying the aforesaid principles to the facts of the present case, the Nominal Roll placed on record shows that as on 22.04.2026, the applicant had remained in judicial custody for a period of 3 years, 2 months, and 6 days. As of now, therefore, he has been in custody for over 3 years and 3 months. Although prosecution evidence has commenced, only 9 out of 17 witnesses have yet been examined, which makes the completion of proceedings within a short time frame unlikely.

11. As regards the merits of the case, it is an admitted position that the alleged seizure was neither conducted in the presence of public witnesses

³ (2023) 18 SCC 166 [hereinafter, "*Mohd. Muslim*"].

⁴ 2023 SCC OnLine SC 918, paragraph 3.

⁵ 2023 SCC OnLine SC 1109, paragraph 4.

⁶ 2026 SCC OnLine SC 671.



nor documented through photography or videography. In *Bantu*, this Court has held that even prior to the introduction of such requirements under the BNSS, these circumstances constitute a relevant consideration at the stage of adjudicating an application for bail. The relevant observations of the Court are as follows:

*“72. Almost all individuals carry a mobile phone compatible for videography these days. From the above cases, it is clear that it is open for the prosecution to furnish reasons to explain and justify the absence of videography and photography in a case. **Mere absence of videography and photography of the recovery does not nullify the case of the prosecution, however, the same can in some circumstances be sufficient to create a doubt as to the veracity of the prosecution’s case.***

*73. The Hon’ble Apex Court, in a catena of judgments has held that **the more severe the punishment, greater has to be the care taken to ensure that all the safeguards provided in the statute are scrupulously followed.***

*74. While a little play in the joint has to be afforded to investigating agencies to enable them to discharge their duties, the authorities also have to be held accountable to prevent abuse of law. **In cases where the factum of recovery of the contraband is supported only by official witnesses, lack of videography and photography, especially in the absence of independent witnesses, casts a doubt on the recovery of the contraband, unless the same is justified by cogent reasons.***

75. As already noted above, in the case of absence of independent witnesses, it is to be seen whether any prejudice is caused to the accused person and testimonies of the police officials can be believed even without corroboration if the same is found to be credible. This Court is of the opinion that the same rationale would extend to cases where there is no photography and videography as well, specially when the same has been deliberated and commented upon by Courts on numerous occasions.

*76. The sufficiency of the explanation, if any, is to be tested during the course of the trial after the prosecution has led its evidence, however, in the opinion of this Court, **the absence of any independent evidence to support recovery (presence of public witnesses, videography or photography) is a relevant factor while considering applications for grant of bail as the same casts a shadow over the very fulcrum of the case.**”⁷*

⁷ Emphasis supplied.



12. In *Sunday Okeke Ugwuoke v. State of NCT of Delhi*⁸, which, as in the present case, involved a seizure effected prior to the enactment of the BNSS, a coordinate Bench of this Court reiterated the same position in the following terms:

*“16. It is the case of the prosecution that the said raid was conducted during daylight hours i.e. around 05.00 - 05.30 P.M. in a public place. Despite this, no public witnesses have joined nor any cogent explanation has been offered for the same. While the absence of independent witnesses may not be fatal to the case of the prosecution, it impacts the transparency and reliability of the search and seizure process, particularly at the stage of bail, where the Court must assess whether a prima facie case has been made out against the accused. Reference in this regard may be had to the decision of the Coordinate Bench of this Court in **Beneth Chukuwuddi (supra)** as well as **Bantu v. State Government of NCT of Delhi**. Likewise, Hon’ble Supreme Court in **Shafhi Mohd. v. State of H.P.**⁹ has also emphasised that the video or photographic documentation of a crime scene, serves as a critical safeguard, ensuring transparency and accountability in the handling of evidence, which is evidently missing in the present case. The following observations from **Beneth Chukuwuddi (supra)** could beneficially be referred to:*

*“8. It is to be noted that the raiding party, acting on information received on 10th March, 2023, had sufficient time to secure independent witnesses before conducting the raid. However, no reasonable explanation has been provided for this omission. Since the alleged recovery took place in a public area, where securing independent witnesses would not have posed any practical difficulty, this lapse reflects a lack of diligence on the part of the investigating agency. **While the absence of independent witnesses may not be fatal to the prosecution’s case per se, it does impact the transparency and reliability of the search and seizure process, particularly at the bail stage, where the Court must assess whether a prima facie case has been made out against the accused.***

*9. This Court in **Bantu v. State Government of NCT of Delhi**, took note of the frequent and mechanical explanations offered for the non-joinder of independent witnesses in cases involving the seizure of contraband. **It was observed that the absence of***

⁸ BAIL APPLN. 1939/2025, decided on 02.12.2025.

⁹ (2018) 5 SCC 311.



independent witnesses, especially in crowded public places, warrants careful judicial scrutiny. This practice undermines the transparency of the seizure procedure and weakens the evidentiary value of the recovery. In the present case, the failure to associate independent witnesses, despite the raid occurring in a public location, indicates a lapse in the search process. While such lapses do not, by themselves, render the recovery invalid, they diminish the evidentiary value of the seizure and introduce reasonable doubt about the integrity of the prosecution's case, which becomes particularly relevant in cases under the NDPS Act, where strict compliance with procedural safeguards is imperative given the severe consequences involved.

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11. The Supreme Court, in the case of Shafhi Mohd. v. State of H.P.⁸ emphasised that the video or photographic documentation of a crime scene, serves as a critical safeguard, ensuring transparency and accountability in the handling of evidence. Further, in Bantu, this Court observed that in instances where videography or photography has not been undertaken, the prosecution can provide clear and valid justifications for such omissions. These judicial observations were made even prior to the enactment of the mandatory videography and photography requirements under the BNSS, illustrating that the Court has recognized the vital role of such documentation in ensuring the fair administration of justice.

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19. Additionally, it is pertinent to note that the Applicant has been in custody for 2 years. Although the chargesheet has been filed, the charges are yet to be framed and there is no indication that the trial will conclude in the foreseeable future.

20. The right to life and personal liberty, enshrined under Article 21 of the Constitution of India, 1950, cannot be rendered nugatory by unwarranted delays in the judicial process. The prolonged incarceration undermines the fundamental right to personal liberty. The extended period of custody, combined with the delay in trial, justifies the Applicant's plea for conditional liberty through the grant of bail, thereby balancing the rights of the accused with the requirements of justice."

(emphasis supplied)"

13. In the present case, although the alleged seizure was effected near a



Police Colony at about 07:40 PM, no public witnesses were associated. Further, the seizure was neither photographed nor videographed. The aforesaid binding authorities thus support the applicant.

14. The status report reflects that the applicant has six prior involvements, of which he has been acquitted in one, and none relate to offences under the NDPS Act. In any event, such prior involvements do not, *per se*, warrant denial of bail, as held by the Supreme Court in *Prabhakar Tewari v. State of Uttar Pradesh and Another*¹⁰. The applicant is also a person with disability, which factor deserves consideration at the stage of bail.

D. CONCLUSION

15. For the aforesaid reasons, it is directed that the applicant be released on bail in connection with FIR No. 194/2023 dated 17.02.2023, registered at Police Station Narela, Outer North District, Delhi, subject to furnishing a bail bond in the sum of Rs. 50,000/-, with one surety of the like amount, to the satisfaction of the concerned Trial Court/Duty Magistrate, and further subject to the following conditions:

- a. The applicant shall appear before the learned Special Court on each and every date of hearing.
- b. If the applicant has a passport, he shall surrender the same to the concerned Trial Court, and shall not leave the country without the prior permission of the concerned Trial Court.
- c. The applicant shall ordinarily reside at the address as per prison records, and shall not change the address without informing the

¹⁰ (2020) 11 SCC 648.



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concerned Investigating Officer [“IO”]/ Station House Officer [“SHO”].

- d. The applicant shall furnish his mobile number to the concerned IO/SHO, and shall ensure that the said mobile number remains operational and switched on at all times. The mobile number shall not be changed, nor shall the phone be switched off, without prior intimation to the IO/SHO.
 - e. The applicant shall not, directly or indirectly, contact, visit, nor offer any inducement, threat, or promise to any of the prosecution witnesses or other persons acquainted with the facts of the case.
 - f. The applicant shall not, directly or indirectly, tamper with evidence nor otherwise indulge in any act or omission that would prejudice the proceedings in the pending trial.
 - g. The applicant shall not commit any offence during the pendency of the proceedings.
16. The application stands disposed of in the above terms.
17. It is clarified that the observations made herein are solely for the purpose of adjudication of the present bail application, and shall not be construed as an expression of opinion on the merits of the case, nor shall they prejudice the rights and contentions of the parties at any stage of the proceedings.
18. A copy of this judgment be sent to the concerned Jail Superintendent for information and necessary compliance.

PRATEEK JALAN, J

MAY 19, 2026/KA/