

IN THE COURT OF ASJ/SPECIAL JUDGE/NDPS
PATIALA HOUSE COURTS, NEW DELHI

Presided by: Sudhir Kumar Sirohi, DHJS

SC No. 545/2022
FIR No. 240/2022
PS Naraina
State Vs. Awadhesh Yadav

SUDHIR KUMAR SIROHI
Special Judge NDPS Act
Room No. 35, P. Building
Patiala House Courts.
New Delhi

11.03.2025

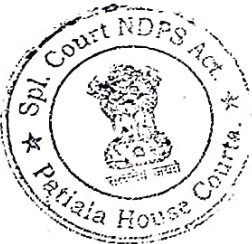
Present: Sh. Ravindra Kumar, Ld. Additional PP for the State.
Mr Aditya Agarwal, Ld counsel for
applicant/accused Awadhesh Yadav.

Arguments on the bail application of accused heard.

Ld counsel for accused argued that the main accused Tarkeshwar Singh has already been granted bail by Hon'ble High Court of Delhi in BA No. 4442/2024 vide order dated 10.02.2025 from whom there was recovery of 21.084kg of ganja and on the basis of disclosure of accused Tarkeshwar, the present applicant/accused was apprehended and 828gm of ganja was recovered from accused/applicant, the allegations against the applicant is of supplying the ganja to co accused Tarkeshwar. It is further argued that present applicant/accused is at parity with co accused Tarkeshwar Singh, therefore, the accused/applicant has crossed the bar u/s 37 NDPS Act and may be admitted to bail.

Ld Addl. PP on another hand opposed the bail application and argued that the present applicant/accused is a supplier of contra-band in this matter and if bail is granted to accused/applicant then he may abscond.

Submissions of all parties heard.



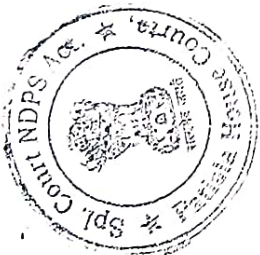
In the bail application no. 4442/2024 dated 10.02.2025 titled as Tarkeshwar Singh Vs State, it is held by Hon'ble High Court of Delhi as under:

"10. Admittedly in the present case as well independent public witness at the time of the raid on 04.05.2022 is missing. No cogent explanation has been given for not joining public witnesses. The Constitutional Courts have been repeatedly highlighting this lacunain the prosecution action since a long time and have repeatedly held that the failure to join independent witnesses casts a doubt on recovery and tilts the balance in favour of the accused during the hearing of the bail.

11. However, this Court is not considering the aforesaid pleas raised by the Applicant, as this Court has taken into consideration the submission of the Applicant as regard his incarceration and the delay in the and the considerable delay conclusion of the trial.

12. As per the nominal roll dated 04.01.2025 the Applicant has been in jail for 2 Years 3 Months 8 Days since the date of his arrest i.e., 04.05.2022. The said nominal roll also reflects that the Applicant has no criminal antecedents under NDPS Act and his conduct in the jail has been satisfactory. The Nominal Roll does not refer to the FIR No. 125/2016 at P.S. Manjhi and even the SCRB report filed by Respondent with the Status Report does not refer to any FIR at P.S. Manjhi.

12.1 The Nominal Roll reflects that the Applicant was granted interim bail thrice and he has duly surrendered upon expiry of the interim bail. The Applicant is currently on interim bail since 20.12.2024 on medical grounds.



12.2. The chargesheet against the Applicant and the co-accused has been filed and the same reflects that there are 28 witnesses, whom have to be examined by the prosecution and out of said 28 witnesses as on date only three (3) formal witnesses have been examined, as on date. In light of the said facts, it appears to this Court that a considerable time will take to conclude the trial.

11.3 The Supreme Court has consistently held that delay in trial/prolonged trial is antithetical to the fundamental right enshrined in Article 21 of the Constitution of India. The Supreme Court has held that even in cases relating to NDPS if the prosecution is unable to conclude the trial within a reasonable period the accused would be entitled to pray for bail if the accused is not liable for the delay.

13. The Supreme Court in *Rabi Prakash v. State of Odisha* where a recovery of 247 Kgs of Ganja was made and the accused had been in custody for more than three and a half years, with no criminal antecedents, the Court 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."

(Emphasis supplied)

14. In *Man Mandal v State of West Bengal* where the seizure was of commercial quantity and the accused had been incarcerated for about two years and there was no hope for the trial to be concluded soon, the Supreme Court while granting bail stated as under:

"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."

(Emphasis supplied)

15. In *Mohd. Muslim alias Hussain v State (NCT of Delhi)* the Court stated that, grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the NDPS Act. The Supreme Court noted as under:

"21. The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused's guilt may be proved. The judgments of this court have, therefore, emphasized that the satisfaction



which courts are expected to record, i.e., that the accused may not be guilty, is only prima facie, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation (as held in *Union of India v. Rattan Malik*¹⁹). 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



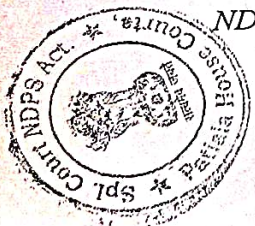
relationships. Psychological problems result from loss of freedom, status, possessions, dignity any autonomy of personal life. The inmate culture of prison turns out to be dreadful. The prisoner becomes hostile by ordinary standards. Self-perception changes.

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)

16. The above judgments clearly hold that if prosecution is unable to conclude trial in NDPS matters speedily it cannot rely upon the fetters of Section 37 of the NDPS Act to oppose the bail of the accused who are facing trial. The Applicant in this case has no criminal priors under the NDPS Act and his conduct during his incarceration of 2 years 3 months and 8 days has been recorded as satisfactory in the Nominal Roll.

17. The judgments cited by Mr. Khanna, learned APP are distinguishable. The Court in *Tifal Naukhej alias Tifley* (supra) was concerned with an accused who had criminal priors in NDPS Act; the quantity recovered from the co-accused was of



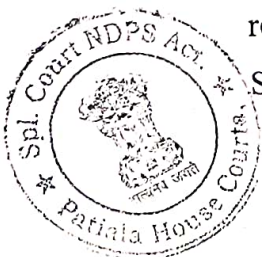
330 kgs of heroin and the allegation against the accused therein was that he is the kingpin of the syndicate.

18. Similarly, the coordinate bench of this Court in **Gauri Shankar Jaiswal** (supra) was dealing with cases where quantity of contraband recovered from the accused was 63 Kgs Charas, which is way beyond the commercial quantity, and the only ground of bail considered by the Court therein was alleged defect in sampling procedure; however, this ground did not find favour with the Court in the facts of that case.

19. In the aforementioned facts, it is evident that the Applicant, who was arrested on 04.05.2022 has not contributed to any delay in trial. It is correct that the quantity of contraband recovered from the Applicant is commercial in nature and the provisions of Section 37 of the NDPS Act are attracted. However, in these facts where the conclusion of Trial cannot be foreseen in near future, this Court is satisfied that the conditions of Section 37 of the NDPS Act can be dispensed with at this stage.

20. Therefore, this Court is of the opinion that Applicant has satisfied the conditions for grant of bail."

From accused Tarkeshwar, there is recovery of commercial quantity of contra-band, the present applicant/accused is in JC since 08.05.2022 and has spent more time in JC than the accused Tarkeshwar Singh. From the present applicant/accused, there is recovery of 828gm of ganja and applicant is at parity with co accused Tarkeshwar Singh on the basis of custody period and delay in trial, therefore, applicant/accused has crossed the bar u/s 37 NDPS Act due to the reasons mentioned in the bail order of co accused Takeshwar Singh i.e. delay in trial and period of custody. Accordingly, the



present applicant/accused, Awadhesh Yadav is directed to be released on bail upon providing a personal bond in the sum of Rs. 1,00,000/-with one surety of the like amount subject to the satisfaction of this court and further subject to the following conditions:

- (i)Applicant will not leave the country without prior permission of the Court.
- (ii)Applicant shall provide permanent address to this court. The Applicant shall intimate the Court by way of an affidavit and to the IO regarding any change in residential address.
- (iii)Applicant shall appear before the Court as and when the matter is taken up for hearing.
- (iv)Applicant shall join investigation as and when called by the IO concerned.
- (v)Applicant shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the IO concerned.
- (vi)Applicant will report to the concerned IO every second and fourth Friday of every month, at 4:00 PM, and will not be kept waiting for more than an hour.
- (vii)Applicant shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, or tamper with the evidence of the case.

Application is disposed of accordingly.

Copy of the order be given dasti as well as sent to accused in jail.



-S-d-
(Sudhir Kumar Sirohi)
ASJ/Spl. Judge, NDPS/N. Delhi
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