

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

% Judgment delivered on: 11.06.2025

+ **BAIL APPLN. 900/2025**

VINAY DUA .....Applicant

versus

STATE GOVT. OF NCT OF DELHI .....Respondent

+ **BAIL APPLN. 982/2025 & CRL.M.A. 7469/2025**

RAJ KUMAR AGARWAL .....Applicant

versus

STATE OF NCT DELHI & ANR. ....Respondent

**Advocates who appeared in this case:**

For the Applicants : Mr. Aditya Aggarwal & Ms. Shivani Sharma, Advs. for Applicant in BAIL APPLN. 900/2025.

Mr. Vimal Kumar & Mr. Abhinav Rai, Advs. for Applicant in BAIL APPLN. 982/2025.

For the Respondents : Ms. Richa Dhawan, APP for the State with SI Sukhraj Singh, ANTF/ Crime Branch.

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HON'BLE MR JUSTICE AMIT MAHAJAN**

**JUDGMENT**

1. The present applications are filed seeking regular bail in FIR



No. 243/2024 dated 28.11.2024 registered at Police Station Crime Branch for offences under Sections 22(C)/25/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('**NDPS Act**').

2. Briefly stated, it is alleged that on 28.11.2024, on the basis of a secret information, a trap was laid by the police team near Radhe Krishna Chowk, 5<sup>th</sup>Pusta, Sonia Vihar, Delhi. It is alleged that at about 10:15 AM, at the instance of the secret informer, three accused persons – Laxman, Ankit Shukla, and Pankaj were identified to be involved in the supply of contraband. Out of the three accused persons, accused Laxman and Pankaj were apprehended by the police, however, accused Ankit Shukla fled the spot. It is alleged that a brown colour cardboard box containing 176 boxes of Alprazolam tablets manufactured by the company “*Pure & Cure Healthcare Pvt Ltd.*” where each box contained 1760 strips and each strip contained 60 tablets weighing 14.080 kg was recovered from the possession of accused Laxman.

3. It is alleged that another brown coloured cardboard box containing 187 boxes of Alprazolam tablets manufactured by the company “*Mancare Laboratories Pvt. Ltd.*” where each box contained 1870 strips and each strip contained 50 tablets weighing 13.090 kg was recovered from the possession of the accused Pankaj. During the course of the investigation, both the accused persons were arrested. During interrogation, accused Pankaj and Laxman disclosed that they worked for one Ankit Shukla who had a godown/medical shop in Sant



Nagar, Ghaziabad where accused Ankit Shukla stored illegal drugs. It is alleged that at the instance of accused Pankaj and Laxman, a recovery of 18000 Alprazolam tablets was effected from the medical shop of accused Ankit Shukla. During the course of investigation, accused Ankit Shukla was arrested on 17.12.2024. During interrogation, accused Ankit Shukla revealed that the recovered boxes of Alprazolam tablets manufactured by *Pure & Cure Healthcare Pvt Ltd.* were procured by him from one Tanishq and the Alprazolam tablets manufactured by the company "*Mancare Laboratories Pvt. Ltd.*" were procured by him from one Sonu. Accused Tanishq was thereafter arrested on 28.12.2024.

4. During the course of interrogation, accused Tanishq disclosed that on 24.11.2024, accused Ankit Shukla had ordered a large consignment of Alprazolam tablets from him. He disclosed that he subsequently ordered the supply from the applicant Vinay Dua who delivered the consignment to his residence on 26.11.2024 through a person namely Naresh who worked in an online porter company. A further raid conducted at the residence of accused Tanishq led to the recovery of 3,000 Alprazolam tablets and a mobile phone belonging to accused Ankit Shukla was also recovered. Subsequently, at the instance of accused Tanishq, the applicant Vinay Dua was arrested on 01.01.2025.

5. During the course of interrogation, the applicant Vinay Dua disclosed that he delivered 200 boxes of Alprazolam tablets to the



residence of accused Tanishq upon the latter's demand. He further disclosed that the delivery was facilitated by a person namely Naresh who worked in an online porter company. Upon further interrogation, the applicant - Vinay Dua revealed that he sourced the tablets from one person namely Aditya Kumar Sharma. Accused Aditya Kumar Sharma was thereafter arrested on 04.01.2025. During the course of investigation, it was revealed that the applicant Vinay Dua in addition to using his own bank account used the bank account of his worker Mohd. Azeem to conduct financial transactions. It is alleged that the applicant Vinay Dua used the account of Mohd. Azeem to make payments and receive funds from accused – Tanshiq and Aditya Kumar Sharma. The analysis of the mobile phone of the applicant Vinay Dua further revealed that he shared the location of accused Tanishq's residence and mobile number with the delivery boy Naresh prior to the date of delivery thereby facilitating the delivery of consignment of recovered Alprazolam tablets.

6. During interrogation, accused Aditya Kumar Sharma disclosed that he sourced the tablets from the applicant Raj Kumar Aggarwal. The applicant Raj Kumar Aggarwal was thereafter arrested on 07.01.2025. During the course of interrogation, applicant Raj Kumar Aggarwal disclosed that he knew accused Aditya Kumar Sharma through a WhatsApp group. He disclosed that he sourced the tablets from one Amit Kumar Aggarwal. It is alleged that the during the course of investigation, WhatsApp chats between the applicant Raj



Kumar Aggarwal and accused Amit Kumar Aggarwal was found thereby revealing discussions related to various NRX-listed drugs including Alprazolam tablets.

7. The learned counsels for the applicants submitted that the applicants have been falsely implicated in the present case. They submitted that the applicants were arrested solely on the basis of a disclosure statement of the co-accused persons, and that the same cannot be used against the applicants in view of the judgment of the Hon'ble Apex Court in the case of *Tofan Singh v. State of Tamil Nadu* : (2021) 4 SCC 1.

8. They submitted that the CDR connectivity and financial transactions between the applicants and co-accused persons pertains to fair transactions and have no relation to the commission of the alleged offences.

9. They submitted that the chargesheet has already been filed in the present case and that there is no need to subject the applicants to further incarceration. They submitted that no recovery has been effectuated from the applicants in the present case. They submitted that the applicants have clean antecedents.

10. The learned Additional Public Prosecutor for the State vehemently opposed the grant of any relief to the applicants. She submitted that the recovery in the present case related to commercial quantity of drugs thereby attracting the bar under Section 37 of the



NDPS Act. She submitted that there exists several financial transactions between the applicant Vinay Dua and accused Tanishq and Aditya Kumar Sharma. She submitted that the call records of the applicant – Vinay Dua revealed that he was in close and continuous communication with accused Tanishq and Aditya Kumar Sharma thereby reflecting his involvement in the present case.

11. She submitted that certain financial transactions between the applicant Raj Kumar Aggarwal and accused Aditya Kumar Sharma also exist thereby pointing towards his involvement in the present case. She submitted that the analysis of the call record of the applicant Raj Kumar Aggarwal revealed that he was in constant communication with the other co-accused persons. She submitted that there exist certain WhatsApp chats between the applicant Raj Kumar Aggarwal and accused Amit Kumar Aggarwal which relate to discussions related to various NRX-listed drugs including Alprazolam tablets.

## **ANALYSIS**

12. 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. At the same time, the period of incarceration is also a relevant factor that is to be considered.

13. 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.”*

14. It is argued that the rigours of Section 37 of the NDPS Act are attracted in the present case as there is recovery of commercial quantity of contraband.

15. The Hon’ble Apex Court, in the case of *Union of India v. Shiv*



***Shanker Kesari* : (2007) 7 SCC 798**, has observed as under:

*“11. The court while considering the application for bail with reference to Section 37 of the Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty.*

*12. Additionally, the court has to record a finding that while on bail the accused is not likely to commit any offence and there should also exist some materials to come to such a conclusion.”*

16. Once the rigours of Section 37 of the NDPS Act are attracted, as provided under the Section, the Court can grant bail only when the twin conditions stipulated in Section 37(1)(b) of the NDPS Act are satisfied in addition to the usual requirements for the grant of bail– (1) The court must be satisfied that there are reasonable grounds for believing that the person is not guilty of such offence; and (2) That the person is not likely to commit any offence while on bail.

17. A Coordinate Bench of this Court in ***Phundreimayum Yas Khan v. State (GNCT of Delhi)* : 2023 SCC OnLine Del 135**, has held that when there is no material to link the applicant with the recovery of the commercial quantity from the co-accused persons, the rigors of Section 37 of the NDPS Act would not apply. It was further held that the disclosure statement of co-accused is *per se* not admissible without there being any corroboration.

18. It is the case of the prosecution that the name of the applicant



Vinay was disclosed by accused Tanishq, who stated in his disclosure statement that he had procured the contraband from the said applicant. Subsequently, in his disclosure statement, the applicant Vinay disclosed that he had sourced the contraband for delivery from the accused Aditya Kumar. Thereafter, the name of the applicant Raj Kumar emerged in the disclosure of accused Aditya Kumar, who named the applicant Raj Kumar to be the supplier of the contraband.

19. It is pertinent to note that the allegations against the applicants is essentially based on disclosure statement of the co-accused persons. As held by the Hon'ble Apex Court in *Tofan Singh v. State of Tamil Nadu* :**(2021) 4 SCC 1**, disclosure statements made under Section 67 of the NDPS Act are inadmissible as evidence unless corroborated by independent material. The relevant paragraphs of the said judgment are set out below:-

*“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 then goes on to follow Raj Kumar Karwal 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 or Noor Aga and Nirmal Singh Pehlwan v. Inspector, Customs 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)

20. While the veracity of the disclosure statement against the applicants will be tested during the course of the trial, however, at this stage, it cannot be ignored that no recovery was ever effected from the applicants.

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.

26. It is also relevant to note that the chargesheet has already been



filed in the present case. Although the applicants were only arrested in January, 2025, however, it is pertinent to note that the matter is still at the stage of arguments on charge. In such circumstances, the trial is likely going to take long to conclude.

27. The object of jail is to secure the appearance of the accused during the trial. The object is neither punitive nor preventive and the deprivation of liberty has been considered as a punishment.

28. Even otherwise, any apprehension that the applicants will indulge in similar offences or evade trial can be taken care of by putting appropriate conditions.

29. The applicants are, therefore, directed to be released on bail on furnishing a personal bond for a sum of ₹20,000/- with two sureties of the like amount respectively, subject to the satisfaction of the learned Trial Court, on the following conditions:

- a. The applicants 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 applicants shall under no circumstance leave the country without the permission of the learned Trial Court;
- c. The applicants shall appear before the learned Trial Court as and when directed;
- d. The applicants shall provide the address where they would be residing after their release and shall not change the address without informing the concerned IO/ SHO;



- e. The applicants shall, upon their release, give their mobile number to the concerned IO/SHO and shall keep their mobile phone switched on at all times.
30. In the event of there being any FIR/DD entry/complaint lodged against the applicants, it would be open to the respondent to seek redressal by filing an application seeking cancellation of bail.
31. It is clarified that any observations made in the present order are for the purpose of deciding the present bail applications and should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.
32. The bail applications are allowed in the aforementioned terms. Pending application also stands disposed of.
33. A copy of the order be placed in both the matters.

**AMIT MAHAJAN, J**

**JUNE 11, 2025**