

Harsh Yadav vs State Govt Of Nct Of Delhi on 28 February, 2025

Author: Sanjeev Narula

Bench: Sanjeev Narula

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IN THE HIGH COURT OF DELHI AT NEW DELHI
BAIL APPLN. 136/2025
HARSH YADAV

STATE GOVT OF NCT OF DELHI

Through: Mr. Amit Ahlawat,
ASI Randhir Singh
Rajouri Garden, D

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

% 28.02.2025

1. The present application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (formerly Section 439 of the Code of Criminal Procedure, 1973) seeks regular bail in FIR No. 290/2023 under Section 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 registered at P.S. Crime Branch. The chargesheet has been filed qua the Applicant under Sections 20(B)(ii)(C) and 29 of the NDPS Act.

2. Briefly, the case of the prosecution is as follows:

2.1. On 18th December, 2023, SI Raja Ram of P.S. Crime Branch received confidential information regarding illegal supply of narcotic substances.

Acting on this tip-off, a police team was constituted, and a raid was "BNSS"

"CrPC."

"NDPS"

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conducted at F-Block Road, Gandhi Vihar, Gopalpur, Delhi. 2.2. Based on the informer's identification, one Harsh Vardhan was apprehended, and a total of 22.786 kilograms of cannabis (ganja) was recovered from his possession. The contraband was seized, and the subject FIR No. 290/2023 under Section 20(b)(ii)(C) of the NDPS Act was registered at P.S. Crime Branch.

2.3 During interrogation, Harsh Vardhan disclosed that he had procured the recovered contraband from one Biswajit Mahapatra @ DJ, who is a regular supplier of Ganja and hails from Odisha. Harsh Vardhan further disclosed that he used to supply Ganja to some of his customers in Delhi through WhatsApp. Pursuant to this information, the police examined the data on Harsh Vardhan's mobile phone and found call records and WhatsApp chats between him and the alleged source of supply, Biswajit Mahapatra.

2.4 Thereafter, the contact numbers of the customers to whom the main accused Harsh Vardhan used to sell the contraband were recovered from his phone and three co-accused persons (Ramesh Kumar Sharma @ Sonu, Biswajit Mahapatra @ DJ and Amit Kumar Tiwari@ JAM) were identified and arrested at Harsh Vardhan's instance.

2.5 The samples of contraband recovered from the main accused Harsh Vardhan and co-accused Ramesh Kumar Sharma were sent to FSL, Rohini and the results confirm that the recovered substance was "Ganja". 2.6 Pertinently, during investigation, Harsh Vardhan also disclosed that his roommate - Harsh Yadav (the Applicant), is also involved in the illegal trade of contraband trade. According to the prosecution, the Paytm account linked to the Applicant's mobile number was used to process payments for This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 21/03/2025 at 22:55:43 purchasing and selling contraband. Based on this disclosure, the Applicant - Harsh Yadav was arrested on 22nd July, 2024.

3. In light of the above, counsel for Applicant presses the following grounds for seeking bail:

3.1. The other co-accused arrested in connection with the present FIR, who were implicated based on the disclosure statement of the main accused, Harsh Vardhan--have already been granted bail. 3.2. The Applicant has been in custody since 22nd July, 2024, and he has undergone a period of 6 months and 26 days in incarceration. Since the investigation has been completed, and chargesheets have already been filed, no useful purpose would be served by prolonging his detention. 3.3. There has been no recovery of contraband from the possession of the Applicant and the entire case of the prosecution against him is based on the Call Detail Records⁴ and the alleged trail of money transactions, which is not sufficient to implicate the Applicant.

4. On the other hand, Mr. Amit Ahlawat, APP for State, strongly opposes the present bail application and submits as follows:

4.1 The Applicant is not merely an associate but an active participant in the narcotics syndicate. He allegedly played a key logistical role by facilitating the booking of railway and flight tickets to and from Odisha, using a Paytm account linked to his Canara Bank account. He also accompanied the main accused, Harsh Vardhan, to Bhubaneswar, allegedly in connection with contraband dealings.

4.2 The prosecution has traced substantial financial transactions between the Applicant and other accused persons. The Applicant allegedly received This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 21/03/2025 at 22:55:43 10 lakhs from co-accused Amit Kumar Tiwari, Ramesh Kumar Sharma @ Sonu, and Arul Pandiyan, and transferred 7 lakhs to the primary source of the contraband, Biswajit Mahapatra @ DJ. This financial trail, according to the prosecution, establishes that the Applicant acted as a conduit for handling monetary transactions related to the illicit narcotics trade. 4.3 The rigours of Section 37 of the NDPS Act are attracted in the present case, as per the decision of the Supreme Court in NCB v. Mohit Agarwal. Further, the Supreme Court in the case of State of Kerala v. Rajesh upheld the legislative mandate of the NDPS Act by reiterating that bail ought to be granted only under exceptional circumstances after strict scrutiny, especially in cases involving commercial quantities of narcotics. 4.4 The Applicant initially failed to join the investigation, which necessitated his arrest. Given his alleged role in handling finances for the narcotics syndicate, there is a significant risk of tampering with evidence or evading trial. The Applicant's previous bail plea was dismissed by the Special NDPS Court, and no new grounds have emerged to justify reconsideration.

5. The Court has considered the arguments advanced by both parties. Pertinently, there is no direct recovery of contraband from the possession of the Applicant. The prosecution case hinges primarily on the disclosure statement of the main accused, Harsh Vardhan, who alleged that the Applicant's Paytm account was used for financial transactions related to the trafficking of narcotics. Thus, the foundation of the prosecution's case rests on conspiracy as envisaged under Section 29 of the NDPS Act, which criminalizes aiding or abetting the commission of an offence under the Act.

"CDRs"

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The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 21/03/2025 at 22:55:43 Thus, given that the total quantity of contraband involved exceeds the commercial threshold, and since the prosecution has invoked Section 29 NDPS Act, Section 37 of the Act is attracted. Therefore, the Applicant must meet the twin conditions under Section 37(1)(b) of the Act for grant of bail:

(i) the Court must be satisfied that there are reasonable grounds to believe the accused is not guilty of the alleged offence, and (ii) the accused is not likely to commit any offence while on bail.

6. A careful perusal of the record reveals that the only evidence against the Applicant comprises of the disclosure statement of the co-accused, Harsh Vardhan; the CDRs, and the trail of monetary transactions, which allegedly pertain to the illegal trade of contraband. It is well-settled that disclosure statements of co-accused are not substantive evidence unless corroborated by independent material⁵. Further, the evidentiary value of CDRs which allegedly establish communication between the accused persons must be assessed during trial and cannot form the sole basis for denial of bail, as observed by a Co-ordinate Bench of this Court in *Deepak Nagiya v. State (NCT of Delhi)*⁶. The relevant portions of the said judgement are as follows:

"20. The only incriminating material against the petitioner is the disclosure statement of accused Nisha Malik and CDRs showing the petitioner's family being in touch with said Nisha Malik. Though disclosure statement of co-accused Nisha Malik under Section 67 of the NDPS Act is not admissible per se in view of the decision of the Supreme Court in *Tofan Singh v. State of Tamil Nadu*, (2021) 4 SCC 1, but even if the advantage of the same is not extended to the petitioner at this stage of considering his anticipatory bail application in view of the decision of Supreme Court in *State of Haryana v. Samarth Tofan Singh v. State of Tamil Nadu*, (2021) 4 SCC 1 2023 SCC OnLine Del 5641 This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 21/03/2025 at 22:55:43 Kumar : (Crl.A.1005/2022), wherein it has been observed that the advantage of *Tofan Singh* (supra) perhaps can only be taken at the time of arguing the regular bail application or at the time of final hearing after conclusion of the trial but not at the stage of anticipatory bail, still it cannot be overlooked that co-accused Nisha, who has named the present petitioner has already been granted regular bail on the ground that no recovery of contraband has been made from her.

21. Further, recovery from the co-accused Neha was also of intermediate quantity and there is nothing on record to connect her to the petitioner on one hand and to the main accused *Surender @ Bhalu* on the other hand.

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24. Insofar as the CDRs are concerned, I am of the view that the evidentiary value of the same shall be seen at the stage of the trial and it cannot be a ground to deny anticipatory bail to the petitioner at this stage. I am supported in my view by the judgment of the Supreme Court in *State (by NCB) Bengaluru v. Pallulabid Ahmad Arimutta*, (2022) 12 SCC 633, the relevant paragraph of which reads as under:--

"12. It has been held in clear terms in *Tofan Singh v. State of T.N.* [*Tofan Singh v. State of T.N.*, (2021) 4 SCC 1 : (2021) 2 SCC (Cri) 246], that a confessional statement recorded under Section 67 of the NDPS Act will remain inadmissible in the trial of an

offence under the NDPS Act. In the teeth of the aforesaid decision, the arrests made by the petitioner NCB, on the basis of the confession/voluntary statements of the respondents or the co-accused under Section 67 of the NDPS Act, cannot form the basis for overturning the impugned orders [Pallulabid Ahamad Arimutta v. State, 2019 SCC OnLine Kar 3516], [Mohd. Afzal v. Union of India, 2020 SCC OnLine Kar 3433], [Munees Kavil Paramabath v. State, 2020 SCC OnLine Kar 3431], [Abu Thahir v. State, 2019 SCC OnLine Kar 3517], [Mohd. Afzal v. Union of India, 2020 SCC OnLine Kar 1294], [Munees Kavil Parambath v. State of Karnataka, 2020 SCC OnLine Kar This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 21/03/2025 at 22:55:44 3432] releasing them on bail. The CDR details of some of the accused or the allegations of tampering of evidence on the part of one of the respondents is an aspect that will be examined at the stage of trial. For the aforesaid reason, this Court is not inclined to interfere in the orders....."

(emphasis supplied)

25. Likewise, a Coordinate Bench of this Court in Phundreimayum Yas Khan v. State (NCT of Delhi), 2023 SCC OnLine Del 135 has observed that in the absence of any other incriminating material, the CAF/CDR details cannot be a ground to deny the bail. The relevant para reads as under:--

Existence of any conspiracy between the applicant and Sayed Javed Hussain based on the CDRs a. It is stated by learned counsel for the Respondent that the call record details show that the applicant was in frequent contact with one Amarjit Singh Sandhu on

26.01.2021, i.e, the date when the Tramadol tablets were collected by the co-accused Sayed Javed Hussain. He further states that according to the CAF/CDR details, location of the co-accused Sayed Javed Hussain and the applicant is also found to be in Rajouri Garden on 26.01.2021.

b. In my view, in the absence of any financial dealings, any recovery of narcotic substance or psychotropic substance from the applicant or from the premises of the applicant and/or at the behest of the applicant, the fact that the CAF/CDR details show calls between the applicant and Amarjit Singh Sandhu and the applicant and Sayed Javed Hussain, cannot be a ground to deny him the bail in the present matter.

c. It is for the prosecution to establish the guilt, abetment, conspiracy of the applicant beyond a reasonable doubt which is not borne out from the CAF/CDR details.

26. Considering the circumstances in totality, this Court is of the view that the petitioner has made out a case for grant of This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 21/03/2025 at 22:55:44 anticipatory bail...."

[Emphasis supplied]

7. The prosecution relies on alleged financial transactions between the Applicant and the co-accused to claim his involvement in the drug trade. However, the financial dealings alone, without further corroborative evidence, do not establish criminal conspiracy under the NDPS Act. In the absence of direct recovery or any other independent evidence, the mere existence of financial transactions cannot conclusively establish the Applicant's involvement in narcotics trade. Consequently, prima facie the Court is satisfied that there are reasonable grounds to believe that the Applicant is not guilty of the alleged offence. As regards the second condition of Section 37, it is noted that the Applicant has no prior criminal antecedents and thus the Court is satisfied that Applicant is not likely to commit any offence while on bail.

8. In light of the above, the Applicant is directed to be released on bail on furnishing a personal bond for a sum of 50,000/- with one surety of the like amount, subject to the satisfaction of the Trial Court/Duty metropolitan Magistrate and on the following conditions:

a. The Applicant shall cooperate in any further investigation as and when directed by the concerned Investigating Officer; b. 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; c. The Applicant shall under no circumstance leave the country without the permission of the Trial Court;

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e. The Applicant shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;

f. The Applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.

9. 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.

10. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence the outcome of the trial and should not be taken as an expression of opinion on the merits of the case.

11. The bail application is allowed in the afore-mentioned terms.

SANJEEV NARULA, J FEBRUARY 28, 2025 as "IO"

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