

Munna vs State Of Nct Of Delhi on 7 February, 2025

Author: Sanjeev Narula

Bench: Sanjeev Narula

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IN THE HIGH COURT OF DELHI AT NEW DELHI
BAIL APPLN. 4062/2024
MUNNA

STATE OF NCT OF DELHI

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

% 07.02.2025

1. The present application under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 20231 (erstwhile Section 439 Code of Criminal Procedure, 19732) seeks grant of regular bail in FIR No. 200/2023 under Sections 20, 61 and 85 of the Narcotic Drugs and Psychotropic Substances Act, 19853, registered at P.S. Anand Parbat.

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

2.1 On 11th May, 2023, around 7:30PM, a secret informer informed the "BNSS"

"CrPC"

"NDPS Act" 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 08/02/2025 at 03:58:38 officers deployed for area patrolling near Ramleela Park, Nehru Nagar about supply of the narcotic substance - Ganja by two

men on a scooty. This secret information was shared with the SHO - P.S. Anand Parbat, who verified the fact, and conveyed the said information to the ACP - Patel Nagar Sub- Division. The ACP then directed the SHO to immediately conduct a raid. 2.2 In pursuance of such directions, the raiding team formulated a plan, under the supervision of SI Jagbir, to apprehend the suspicious scooty on the spot. Around 8:00PM, at the instance of the secret informer, two men who were riding a navy blue scooty, were apprehended along with the three bags they were carrying. The Applicant herein was identified as the person riding pillion on the scooty, who had two of the three bags containing Ganja placed between him and the rider. The third bag was on the floorboard of the scooty. Thereafter, senior police officials were informed of the recovery of Ganja and notices under Section 50 of the NDPS Act were served upon both the accused persons.

2.3 Subsequently, ACP - Patel Nagar arrived at the spot and questioned the two accused persons. In his presence, the SI removed the three bags from the scooty and inspected them. A total of 18 small packets of about 2 Kgs each (total weight including the bags being 37.150 Kg) were recovered from the three bags found in the possession of the accused persons. All of the said packets were then placed back into the three bags and the said bags were packed in white cloth (pullandas), sealed and seized vide a seizure memo. Thereafter the three separate pullandas were taken into police possession, were counter sealed by the SHO and deposited with the Malkhana. All of the mandatory conditions under NDPS Act in terms of recovery of narcotic substance were duly complied with by the officers. The navy blue scooty on 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 08/02/2025 at 03:58:38 which the accused persons were travelling, was also seized and it was discovered that the same was registered under the name of the co-accused Md. Afar.

2.4 Based on the recovery, FIR No. 200/2023 was registered at P.S. Anand Parbat under Sections 20, 61 and 85 of the NDPS Act and subsequently, the two accused persons, including the Applicant, were arrested.

2.5 During the course of investigation, accused persons, including the Applicant, disclosed that they had also stored Ganja in the Applicant's rented accommodation in Bapa Nagar. Thereafter, police officials went to the said rented accommodation along with the two accused persons and five bags containing Ganja were recovered from the said accommodation at their instance. A total of 35 small packets, weighing about 2 Kgs each were recovered from the said five bags, with the total weight being 72.100 Kgs (including the weight of the bags). The said five bags were also packed in white cloth (pullandas), sealed, and seized vide another seizure memo. These five pullandas were also taken into police possession, counter sealed by the SHO and deposited with

the Malkhana.

2.6 Thereafter, in compliance with Section 52A of the NDPS Act, an application for sampling was filed before the Metropolitan Magistrate, Tis Hazari Courts and accordingly, sampling of the recovered substance was undertaken. Eight samples were taken from each of the eight pullandas recovered by the police, along with duplicates and the same were marked, kept in two brown envelopes and sealed. Thereafter, the eight original samples were sent to the FSL for examination and report, which opined that the substance recovered was Ganja. Subsequently, after completion of the 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 08/02/2025 at 03:58:39 investigation, a chargesheet has been filed in the present matter before the Trial Court. Charges have also been framed against the accused persons, including the Applicant on 14th May, 2024 under Sections 20(c), 25 and 29 of the NDPS Act.

3. Mr. V.K. Mishra, Counsel for the Applicant, seeks grant of bail on the following grounds:

3.1 The Applicant has been falsely implicated in the present case, and the alleged contraband was planted on him. No recovery was affected from the Applicant at the alleged spot where he was apprehended. The Applicant has no prior criminal record or involvement in any criminal cases till date. 3.2 Further, the notice under Section 50 of NDPS Act was not served on the Applicant, in accordance with law. Nowhere has it been written that he was informed of his rights and that he has understood the same. The notice only shows that he waived off his rights to be searched in the presence of a Magistrate. It is a well settled position of law that there is distinction between informing the accused of the 'option' available before him, as against informing him about his 'right' under Section 50 of the NDPS Act. Reliance in this regard is placed on the judgments of the Supreme Court in Ashok Kumar Sharma v. State of Rajasthan⁴, State of Punjab v. Baldev Singh⁵, Vijaysingh Chandubha Jadeja v. State of Gujarat⁶ and Arif Khan v. State of Uttarakhand⁷.

3.3 In terms of the search conducted on the Applicant's rented premises in Bapa Nagar, the same was done at night, without prior recording of (2013) 2 SCC 67 (1999) 6 SCC 172 (2011) 1 SCC 609 (2018) 18 SCC 380 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 08/02/2025 at 03:58:39 information by the IO, in derogation of Section 42(1) of the NDPS Act. Further, there was no warrant or authorization from a gazetted Officer/ACP before the search was conducted. It is only afterwards that the ACP was informed about the same. Moreover, the weighing of the substances recovered from the rented accommodation of the Applicant was not done in the presence of the ACP.

3.4 Pertinently, no independent/public witness was present during the search of the rented accommodation of the Applicant and even the owner of the premises, whose statement has been recorded under Section 161 of CrPC, was not present during the search. The search was only conducted on the alleged disclosure statements. Moreover, no search list was prepared, nor was the FSL from filed by the IO immediately after the search. This indicates gross violation of the procedure laid down under the NDPS Act. 3.5 The Applicant is a family man, having a wife and four minor children. He is the sole earner of his family and without him, there is no one left to look after his family. The Applicant has been in custody since 11th May, 2023 - i.e., for over 1 year and 8 months. He was earlier released on interim bail by the Trial Court vide order dated 22nd December, 2023 for a period of 7 days, after which the Applicant duly surrendered himself before the Jail Authorities without misusing the liberty granted to him. As of now, the prosecution has cited more than 15 witnesses to be examined during trial, out of which only two formal witnesses have been examined. Therefore, it is clear that the trial is going to take a long time to get completed and the Applicant ought not to be indefinitely kept behind bars.

4. On the other hand, Mr. Mukesh Kumar, APP for the State strongly opposes the present bail application. He submits that since the quantity 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 08/02/2025 at 03:58:39 recovered from the Applicant is 72.100 kg of Ganja, it falls within commercial quantity and as such, the Applicant must satisfy the twin condition under Section 37 of the NDPS Act. He submits that the ground of the alleged violation of Section 50 of NDPS Act is immaterial for the purpose of the consideration of grant of bail in light of settled position of law on this matter. He further submits that there is sufficient material on record to implicate the Applicant in the present case, including his disclosure statement which has directly resulted in the recovery of 72.100 Kgs of Ganja from his rented accommodation. Considering the gravity of the crime, the Court ought not to grant bail to the Applicant.

5. The Court has carefully considered the submissions advanced by both sides. It is well established through catena of judgments by the Supreme Court that the object of granting bail is neither punitive nor preventative. The primary aim sought to be achieved by bail is to secure the attendance of the accused person at the trial⁸. However, since the recovery of contraband of 72.1 Kgs of Ganja clearly falls within the prescribed commercial quantity, the rigours of Section 37 of the NDPS Act are squarely attracted. The Applicant must meet the twin conditions under Section 37(1)(b) of the Act for grant of bail, namely: (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. In terms of the first condition, the Applicant has argued that the procedure of search and seizure as contemplated under the NDPS Act has See also: Sanjay Chandra v. CBI, (2012) 1 SCC 40; Satender Kumar Antil v. Central Bureau of Investigation, (2022) 10 SCC 51.

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7. As regards the second condition under Section 37(1)(b) of the NDPS Act, it is noted that this Applicant has clear criminal antecedents and has not been involved in any previous criminal activity. He is a first-time offender and on an earlier occasion, when the Applicant was granted interim bail by the Trial Court, he did not misuse the liberty granted to him and duly surrendered to the Jail superintendent at the expiry of his bail period. As such, in the opinion of the Court, The Applicant is not likely to engage in criminal activity while on bail.

8. It also bears on the mind of the Court that the chargesheet was filed against the Applicant on 25th July, 2023 and charges were framed against him on 14th May, 2024. Although, the trial is progressing, as of now, out of the 16 witnesses cited by the prosecution, only 2 witnesses have been examined. Therefore, conclusion of trial is likely to take a substantial amount of time. The Applicant has been in custody for over 1 year and 8 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 08/02/2025 at 03:58:39 months. In such circumstances, the Court must strike a balance between the fundamental right to a speedy trial, an integral aspect of the right to life and liberty under Article 21 of the Constitution of India, and the stringent requirements of Section 37 of the NDPS Act. The right to life and personal liberty cannot be undermined by unwarranted delays in the judicial process, particularly when such delays are neither attributable to the accused nor adequately justified by the prosecution with compelling reasons. While the rigours of Section 37 must be meticulously applied, they cannot override the constitutional mandate for timely justice. Reliance in this regard, is placed on the judgements of the Supreme Court in *Mahmood Kurdeya v. NCB*⁹, *Rabi Prakash v. State of Odisha*¹⁰, *Dheeraj Kumar Shukla v. State of U.P.*¹¹, *Man Mandal & Anr. v. State of West Bengal*¹², *Badsha Sk. v. State of West Bengal*¹³.

9. Moreover, it is noticed that almost all of the witnesses cited by the prosecution are police officers/government officials, barring only the owner of the accommodation rented by the Applicant. Thus, the possibility of the Applicant influencing the witnesses in the present case is extremely low.

10. In light of the foregoing, the Applicant is directed to be released on bail on furnishing a personal bond for a sum of 25,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court, on the following conditions:

a. The Applicant shall cooperate in any further investigation as and when directed by the concerned IO;

2022(3) RCR (Criminal) 906 2023 SCC OnLine SC 1109 2023 SCC OnLine SC 918 2023 SCC OnLine SC 1868 This is a digitally signed order.

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d. The Applicant shall appear before the Trial Court as and when directed;

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. g. The Applicant shall report to the concerned IO on the Fourth Friday of every month at 4:00PM and shall not be kept waiting for more than one hour for this purpose.

11. 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.

12. 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 also not be taken as an expression of opinion on the merits of the case.

2023 SCC OnLine SC 1867 This is a digitally signed order.

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

SANJEEV NARULA, J FEBRUARY 7, 2025 nk This is a digitally signed order.

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