

Kamla vs The State Govt. Of Nct Of Delhi on 4 February, 2025

Author: Manmeet Pritam Singh Arora

Bench: Manmeet Pritam Singh Arora

\$~39

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ BAIL APPLN. 4779/2024
KAMLA

THE STATE GOVT. OF NCT OF DELHI

Through: Mr. Laksh Khanna, APP for
along with SI Kartar Si
Anti-Narcotics Cell

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA
ORDER

% 04.02.2025

1. The present application has been filed under Section 483 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (BNSS) seeking grant of regular bail in FIR No. 473/2023 dated 29.04.2023 registered under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) at Police Station (PS) Shahbad Dairy, Delhi.

2. The Trial Court has dismissed the regular bail application vide order dated 17.12.2024 Brief Facts

3. As per the case of the prosecution a secret information (recorded as DD No. 04) was received on 29.04.2023 at 11:20 AM that a lady namely Kamla i.e., the Applicant herein was indulging in sale of Heroin. It is stated that the said informer was produced before Mr. Umesh Sharma, Inspector 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 05/02/2025 at 22:16:59 Narcotics and he then conveyed the information to the ACP who gave the approval for conducting the raid.

3.1. It is stated that the raiding party apprehended the Applicant at 01:14 PM on 29.04.2023. It is stated that she was duly informed of the search which was to be done and about her right with respect to the same. It is stated that in presence of the ACP preliminary search of the Applicant was

done inside her house. It is stated that a Black colour polythene, one transparent polythene packet tied with rubber band containing light brown color powder substance was recovered. It is stated that the said substance was tested with the Field-Testing Kit and the same was detected to be Heroin, which weighed 260 grams.

3.2. It is stated that thereafter, the search of Applicant's house was carried out in presence of ACP but no narcotic substance was found from her house. 3.3. It is stated that during interrogation the Applicant/accused disclosed that the recovered Heroin was procured by her from one Usha for further supply to Juggu.

3.4. It is stated that thereafter, the PC remand of the Applicant was secured. It is stated that during the investigation the Applicant made a supplementary statement that many a times she had procured Heroin from one Minakshi. It is stated that raid was conducted at the house of Minakshi but she was absconding and not present at the house. 3.5. It is stated that co-accused Usha was later arrested on 12.04.2024. It is stated that during interrogation Usha revealed that the Heroin recovered from the Applicant/Kamla was supplied by her. It is stated that she further disclosed that now she procured Heroin from one Danish Raza Khan which 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 05/02/2025 at 22:16:59 was supplied to one Naresh and Shakti. It is stated that in her supplementary statement she disclosed the role of Naresh and Shakti. She stated that Naresh was her supplier and Shakti was the carrier.

3.6. It is stated that at the instance of accused Usha, accused Shakti was arrested on 14.04.2024 and 50 grams Heroin was recovered from his house. 3.7. It is stated that accused Shakti disclosed that he used to procure Heroin from Usha on the instructions of his brother Naresh (accused) and that he works as the carrier of Naresh for supplying Heroin to his customer. It is stated that search for Naresh was done but since he was absconding, he could not be arrested.

3.8. It is stated that on secret information accused Naresh alias Sunny alias Behra was arrested on 14.09.2024 and 280 grams of Heroin was recovered from his house. It is stated that during interrogation Naresh disclosed that he used to supply Heroin to one Beena and her husband Deepak alias Kaja. 3.9. It is stated that one (1) day PC remand of accused Naresh was secured and at his instance on 17.09.2024 the house of Beena and Deepak alias Kaja was identified. It is stated that on the next day i.e., 18.09.2024 at the instance of accused Naresh, accused Beena and accused Deepak were arrested and 260 grams of Heroin was recovered from their house. 3.10. It is stated that at the instance of Deepak, house of one Neha was identified who used to purchase Heroin from Deepak. It is stated that the said Neha is absconding.

3.11. It is stated that on 09.01.2025 at the instance informer accused Danish Raza Khan was arrested. It is stated that accused Usha used to procure Heroin from Danish as well.

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 05/02/2025 at 22:17:00 3.12. It is stated that the main chargesheet in the captioned FIR was filed on 23.10.2023 along with the FSL result of the recovered contraband seized from Applicant/accused. It is stated that charge against the Applicant/accused was framed on 17.11.2023. It is stated that in the main chargesheet there are 18 witnesses and 05 out of the said 18 have been examined so far.

3.13. It is stated that supplementary chargesheet qua accused Usha and accused Shakti was filed on 07.06.2024. It is stated that in this supplementary chargesheet there are 12 witnesses. It is stated that there are 7 common witnesses in the main chargesheet and the supplementary chargesheet.

3.14. It is stated that supplementary chargesheet qua other accused such as Naresh, Deepak and Danish Raza Khan will be filed before the Trial Court soon. It is stated that the next date before the Trial Court is 10.02.2025. 3.15. As per the SCRB report the Applicant herein is involved in 11 other cases excluding the captioned FIR which is sole FIR under NDPS Act. It is stated that the other 10 cases are under the Delhi Excise Act and Punjab Excise Act.

Arguments of the Applicant/accused

4. Ms. Sachdeva, learned counsel for the Applicant states that Applicant herein was arrested on 29.04.2023 and since then she has been lodged in jail. She states that as per the record as on 21.01.2025 the Applicant has been in jail for past 1 Year 6 Months and 15 Days.

4.1. She states that the Applicant is an old lady of 57 years having no nexus with the commission of the offence as alleged in the Chargesheet.

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 05/02/2025 at 22:17:00 4.2. She states that as per the version of the prosecution she was arrested at around 1 PM on 29.04.2023, however the FIR was registered at 7 PM after delay of almost 6 hours.

4.3. She states that no videography and photography of the search and arrest of the Applicant was made by police which is corroborative of the fact that no recovery was made from the Applicant.

4.4. She states that there is also non-compliance of the Section 52-A of the NDPS Act. She states that in the facts of the present case the contraband was allegedly recovered on 29.04.2023 but the application for drawing sample was moved before the learned Magistrate on 02.05.2023. She states that on the said date the contraband was not brought to the Court and thereafter the matter was listed for 06.02.2023 on which date the samples were drawn. The sample was sent to FSL only on 10.05.2023 whereas as per the Standing Order it has to be sent within 72 hours. In this regards she relied upon the judgment of Sanjay v. GNCTD1 to contend that the benefit of this procedural violation has to be given to the Petitioner during hearing of a bail application.

4.5. She states that the Applicant herein has earlier been granted interim bail by the Trial Court on 15.07.2023, 10.05.2024 which was further extended on 18.05.2024. She states that the Applicant has always surrendered timely before the jail authorities.

4.6. She states that in the other cases which were filed against the accused, 8 have been disposed of and in two (2) cases she is out on bail. She states Bail APPL No. 3710/2023.

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 05/02/2025 at 22:17:00 that present is the only case against the accused which is registered under the NDPS Act.

4.7. She states that the search and arrest took place in the Shahbad Dairy area which is thickly populated area and even though the arrest happened in a public spot no independent witness was joined when the raid was conducted and no photography or videography was done which is a material irregularity and at the hearing of bail the presumption of a planted recovery must be extended in favor of the accused/Applicant. For the said argument she relied on the judgment of Zakir Hussain v. GNCTD2. 4.8. She states that investigation qua the Applicant is already complete and the chargesheet has also been filed against the Applicant on 23.10.2023. She states that there are eighteen witnesses out of which only five (5) have been examined as of now.

4.9. She states that supplementary chargesheet has been filed in the matter against other accused persons on 07.06.2024 and because of this trial will start de-novo as there are various overlapping witnesses in the main chargesheet and the supplementary chargesheet.

4.10. She states that the trial will take a long time and no purpose would be served in keeping the ailing Applicant behind the bars. She states that the Applicant is 57 years old and ailing as is evident from the medical status report dated 21.01.2025 sent by the Medical Officer. 4.11. She states that there is violation of Section 50 of NDPS Act as well but she is not pressing the said argument.

Arguments of the State Bail APPL. No. 1418/2024.

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 05/02/2025 at 22:17:00

5. In reply, Mr. Khanna, learned APP states that recovery of more than the commercial quantity of Heroin was secured from the Applicant. 5.1. He states that since the quantity recovered from the Applicant is more than the commercial quantity therefore the bar under Section 37 of the NDPS Act would be attracted and she should not be released on bail. 5.2. He states that that the Applicant herein is involved in the whole nexus of purchase and sale of the Heroin. He states that the Applicant herein is involved in 10 other cases under Excise Act which goes on to prove that she is a

habitual offender.

5.3. He states that it is correct that there are 18 witnesses in the main chargesheet and out of which 5 have been examined and the case is listed next before the Trial Court on 10.02.2025. He states that it is correct that supplementary charge-sheet has been filed against Usha and accused Shakti. He states that in the supplementary charge-sheet there are 12 witnesses and out of these 7 are common with the original charge-sheet. He states that thus 4 of the already examined witness would have to be re-examined. 5.4. He states it is correct that supplementary charge-sheet against other accused i.e. Naresh, Deepak alias Kaja, Beena and Danish Raza Khan are still not been finalized.

5.5. He states that if the Applicant is released on bail there is all likelihood that she might try to flee which would be detrimental to the trial. 5.6. He states that the objection raised by the Applicant with respect to the Section 50 notice and Section 52A of the NDPS Act does not stand in light 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 05/02/2025 at 22:17:00 of the judgment in Rohit Kumar v. GNCTD³ and Bharat Aamble v. State of Chattisgarh⁴.

Analysis and conclusion Trial not concluding in near future

6. 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.

7.1 The Supreme Court in Rabi Prakash v State of Odisha⁵ where a recovery of 247 kgs of ganja was made and the petitioner 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) Bail APPL. No. 4225/2023.

Criminal Appeal No. 250/2025.

2023 SCC OnLine SC 1109.

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 05/02/2025 at 22:17:01
7.2 In *Man Mandal v State of West Bengal*⁶ where the seizure was commercial in nature and the petitioner 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:

"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) 7.3 In *Mohd. Muslim alias Hussain v State (NCT of Delhi)*⁷ 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 2023 SCC OnLine SC 1868.

2023 SCC OnLine SC 352.

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 05/02/2025 at 22:17:01 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)

7. The above judgments clearly state that if prosecution is unable to conclude trial in NDPS matters speedily it cannot rely upon the fetter of Section 37 to oppose the bail of the accused who are under trial.

8. In the facts of the present case, the Petitioner herein was arrested on 29.04.2023 and a charge-sheet against her were filed on 21.10.2023 enlisting 18 witnesses. The charges were framed against her on 17.11.2023 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 05/02/2025 at 22:17:01 and 5 witnesses have been examined. PW-5 was the last witness examined on 22.10.2024 and the next date of hearing before the Trial Court is 10.02.2025.

9. However, subsequently the prosecution has filed supplementary charge-sheet dated 07.06.2024 against 2 co-accused and enlisted 12 witnesses. The prosecution admits that four of the witnesses examined would have be re-examined pursuant to the supplementary charge-sheet. The charges have been framed by the Trial Court on 22.10.2024.

10. In the subject FIR as per the status report dated 29.01.2025 the prosecution has made arrest of further persons i.e., Naresh, Deepak alias Kaja, Beena and Danish Raza Khan. The supplementary

charge-sheet against the said persons is still not final. Moreover, it is stated that another accused Neha is absconding. It is thus, apparent that trial is likely to take considerable time.

11. In the aforementioned facts, it is evident that the Applicant/accused who was arrested on 29.04.2023 has not contributed to any delay in the trial and yet the trial has been stalled since 22.10.2024 on account of the subsequent arrest and filing of the supplementary charge-sheet. It is correct that the quantity recover from the Applicant is commercial in nature and the provisions of Section 37 of the NDPS Act are attracted. However, in these facts where 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. Moreover, keeping in view the medical condition of the Applicant/accused, this Court is of the considered opinion that the Applicant deserves to be enlarged pending conclusion of trial.

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 05/02/2025 at 22:17:01
Conditions of Bail

12. In view of the foregoing, this Court deems this to be a suitable case for the Applicant's release on bail. As a result, the Applicant 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 the Trial 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 the Trial 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.

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 05/02/2025 at 22:17:01

(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.

13. In the event of there being any FIR/DD-entry/Complaint lodged against the Applicant during the period of bail, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

14. Needless to state, but any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on merits of the matter.

15. Accordingly, the petition is disposed of. Pending applications (if any) are disposed of as infructuous.

16. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.

MANMEET PRITAM SINGH ARORA, J FEBRUARY 4, 2025/sk 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 05/02/2025 at 22:17:01