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* IN THEHIGH COURTOF DELHIAT NEW DELHI
BAIL APPLN. 2962/2025

ASHOK KUMAR

S/o Niranjan Lal
Family Line Scheme
No.3 Old TV Tower, Alwar
Rajasthan

.....Petitioner

Through: *Appearance not given*

versus

STATE GOVT OF NCT OF DELHI

through its IO PS Crime BranchRespondent
Through: Mr. Utkarsh, APP for the State with SI
Arvind and ASI Rajeev, Crime Branch

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BAIL APPLN. 3450/2025

IRSHAD SHEIKH

S/o Mubarak Shekh
R/o. A-504, F/F DDA Colony Chaukhandi,
Tilak Nagar Delhi

.....Petitioner

Through: Mr. Aditya Aggarwal, Ms. Kajol Garg
and Mr. Naveen Panwar, Advocates

versus

STATE GOVT. OF NCT OF DELHI

through its IO PS Crime BranchRespondent
Through: Mr. Utkarsh, APP for the State with SI
Arvind and ASI Rajeev, Crime Branch

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

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21.11.2025

1. By this common judgment, this Court shall dispose of the two Bail



Applications filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (*hereinafter referred to as “BNSS”*) read with Section 439 of the Code of Criminal Procedure (*Cr.P.C.*), 1973, seeking grant of **regular Bail in FIR No. 267/2024**, registered at **Police Station Crime Branch**, under Sections **20/25/29** of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*hereinafter referred to as “NDPS Act”*).

2. The **prosecution case**, briefly stated, is that on 23.12.2024, acting on secret information regarding the supply of Ganja in the West Delhi area, a raiding team from the Crime Branch, Central Rangela laid a trap near Gali No. 10, Deepak Vihar, Mohan Garden, Delhi. At approximately 1:10 PM, a Honda WRV car bearing registration No. RJ02CD6481 was intercepted. Two individuals, namely *Kamal Singh* (driver) and *Ashok Kumar* (passenger), were apprehended.

3. Upon search of the vehicle, a maroon-coloured trolley bag containing 8 packets of Ganja weighing **16.420 kg** and one white polythene containing another packet of Ganja weighing **2.030 kg** were recovered from the rear seat. Additionally, one white polythene containing loose Ganja weighing **3.150 kg**, was recovered from beneath the driver's seat. The total weight of the recovered substance, identified as Ganja, was found to be **21.600 kg**.

4. Notices under *Section 50 of the NDPS Act* were served to the accused persons, who declined the offer to be searched before a Gazetted Officer or Magistrate. The accused *Ashok Kumar* and *Kamal Singh* were arrested on the spot at around **1:00 AM on 24.12.2024** and have been in judicial custody ever since.

5. During interrogation, co-accused Kamal Singh and *Ashok Kumar* disclosed that they had procured the contraband from the Petitioner, *Irshad*



Sheikh @ Damru), and his associate Rashid. They alleged that the Petitioner Irshad had delivered approximately 18 kg of Ganja to them, at Pipal Chowk Entry Road earlier that day.

Submissions in Bail Appl. No. 2962/2025 (Ashok Kumar):

6. Learned Counsel for the Petitioner, Ashok Kumar submits that the petitioner has been falsely implicated. He was merely a passenger in the vehicle driven by co-accused Kamal Singh.

7. It is argued that although the total weight is alleged to be 21.6 kg (which is marginally above the commercial quantity threshold of 20 kg), the seizure memo describes the substance as containing “green grassy seeds type smelly leaves substance”. Counsel relies on the definition of “Ganja” under **Section 2(iii)(b)** of the NDPS Act, which excludes seeds and leaves when not accompanied by tops. Since the Investigating Officer (IO) did not segregate the seeds and leaves before weighing, the actual weight of the “contraband” would fall below the commercial quantity, rendering the rigors of Section 37 of the NDPS Act inapplicable.

8. Learned Counsel submits that there is non-compliance with Section 50 of the NDPS Act, as the notice served used the word “any” Gazetted Officer instead of “nearest”. Furthermore, despite the raid being conducted in a busy area and in broad daylight, no independent public witnesses were joined.

9. The Petitioner was merely sitting in the car, and the major recovery was from a bag on the rear seat and under the driver's seat, over which he had no exclusive control.

Submissions in Bail Appl. No. 3450/2025 (Irshad Sheikh):

10. As per the case of the Prosecution, based on the disclosure statements and subsequent investigation involving CCTV footage analysis and Call



Detail Records (CDR), the *Petitioner/Irshad Sheikh* was arrested on 05.03.2025 from his permanent residence in Bhagalpur, Bihar. The Prosecution relies on disclosure statements, Call Detail Records (CDRs), an alleged money transaction of Rs. 80,000/- from Ashok to Irshad's wife, and CCTV footage purportedly showing Irshad delivering the bag to the co-accused.

11. The proceedings for sampling under Section 52A of the NDPS Act were conducted before the Ld. JMFC (West) on **09.01.2025**. The FSL Examination Report dated 21.02.2025, confirmed the samples were Cannabis (*Ganja*). The investigation was completed, and the Chargesheet was filed on **13.06.2025**.

12. The Petitioner, *Irshad Sheikh* in **BAIL APPLN. 3450/2025** has been in judicial custody since his arrest on 05.03.2025. An earlier Bail Application filed before the Ld. Special Judge, (NDPS), was dismissed *vide* Order dated 02.09.2025.

13. **Learned Counsel for Irshad Sheikh contends** that the Petitioner was arrested solely on the basis of the disclosure statement of co-accused, Ashok and Kamal. Admittedly, no contraband was recovered from the possession of Irshad Sheikh or at his instance.

14. Reliance has been placed on the judgment of the Apex Court in *Tofan Singh v. State of Tamil Nadu*, (2021) 4 SCC 1, to argue that such statements are inadmissible and cannot form the basis of conviction.

15. Regarding the CCTV footage and bank transactions, the counsel argues that the authenticity of the CCTV footage and Certification under Section 65B of the Evidence Act/Section 63 of BSA and the purpose of the bank transaction which is claimed to be a loan for medical emergency of his wife,



are matter of trial. Mere CDR connectivity or a money trail does not conclusively prove a conspiracy for drug trafficking, at this stage.

16. **Status Report has been filed on behalf of the State**, which be taken on record. Learned APP for the State vehemently opposes the Bail Applications. It is submitted that the total recovery is **21.600 kg**, which falls under the **commercial quantity** (20 kg and above), attracting the bar under **Section 37** of the NDPS Act.

17. Regarding **Ashok Kumar**, it is submitted that he was caught red-handed in conscious possession of the contraband. The FSL report confirms the substance as Ganja.

18. Regarding *Irshad Sheikh*, the State has submitted that he is the main supplier. The CCTV footage establishes his presence and the act of handing over the contraband. The money trail of Rs. 80,000/- corroborates the illicit trade.

Submissions heard.

19. The primary hurdle for Bail in this case is the bar under Section 37 of the NDPS Act, which applies if the recovered quantity is “commercial”. The threshold for Ganja is 20 kg. The recovery here is 21.600 kg.

20. However, a perusal of the **Seizure Memo** describes the recovered substance as containing “*green grassy seeds type smelly leaves substance*”.

21. **Section 2(iii)(b)** of the NDPS Act defines Ganja as: “*ganja, that is, the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever name they may be known or designated*”.

22. It is a settled legal position, affirmed by various High Courts including the Bombay High Court in *Mohammad Jakir Nawab Ali v. The State of*



Maharashtra, decided on 20.09.2024 in Crl. Applic. (BA) No. 602/2024 and the Delhi High Court in Basant Rai v. State, decided on 02.07.2012 in Crl. Appeal No.909/2005, that if the seized substance contains seeds and leaves mixed with flowering tops, the investigating agency must segregate the non-prohibited parts i.e. seeds and leaves, before weighing to determine the quantity of the “contraband”.

23. **In the present case**, the total weight is 21.600 kg. Even a marginal reduction of 1.7 kg due to the weight of seeds, leaves, or packaging material would bring the quantity down to the **intermediate category**, thereby lifting the strict embargo of Section 37. Since no segregation was done on the spot or mentioned in the FSL report as being separated before weighing, there is a reasonable doubt as to whether the *actual* contraband weight constitutes a commercial quantity. This benefit of doubt, at the Bail stage, must accrue to the accused, thereby making the embargo of Section 37 NDPS Act, not applicable to the present facts .

24. The **Petitioner/Irshad Sheikh** was not apprehended at the spot. His implication rests primarily on the disclosure statements of co-accused persons. The Apex Court in Tofan Singh, (supra) has categorically held that a confession made to police officers, is inadmissible and cannot be the sole basis for conviction.

25. The Prosecution relies on CCTV footage and a bank transaction. The evidentiary value of the CCTV footage, in the absence of a certificate under Section 63 of the BNSS and the explanation regarding the bank transaction being a loan, are defences that will be tested during trial.

26. There was no recovery from **Irshad Sheikh**, and the primary evidence against him is corroborative in nature being the CCTV footage and the money



credited to the account of his wife, which are a matter of trial. He is in judicial custody since 05.03.2025. The Chargesheet has already been filed. Considering the totality of circumstances, he is held entitled to Bail.

27. While **Petitioner/Ashok Kumar** was apprehended on the spot, the argument regarding the inclusion of seeds and leaves in the total weight casts a serious doubt on whether the recovery falls within the commercial quantity. The Petitioner has been in custody since **24.12.2024**. The trial is likely to take considerable time to conclude.

28. In light of the aforesaid discussion, the Bail Applications of the Petitioners Ashok and Irshad, are **allowed**.

29. It is directed that the Petitioners, Ashok Kumar and Irshad Sheikh, be released on bail in FIR No. 267/2024, PS Crime Branch, subject to the following conditions:

- i. Each Petitioner shall furnish a personal bond in the sum of Rs. 35,000/- (Rupees Fifty Thousand Only) with one surety of the like amount to the satisfaction of the learned Trial Court/Duty Magistrate.
- ii. The Petitioners shall provide their mobile numbers to the Investigating Officer (IO) and ensure they remain active and reachable at all times.
- iii. The Petitioners shall surrender their passports, if any, to the Trial Court and shall not leave the country without prior permission.
- iv. The Petitioners shall appear before the Trial Court on every date of hearing.
- v. The Petitioners shall not contact the prosecution witnesses or tamper with evidence in any manner.
- vi. The Petitioners shall report to the SHO, Police Station Crime



Branch, once every month on the first Monday at 10:00 AM.

30. The Applications stand disposed of in the above terms.
31. Copy of this order be sent to the Jail Superintendent concerned for necessary compliance.

NEENA BANSAL KRISHNA, J.

NOVEMBER 21, 2025