

Ashwani Kumar @ Ashu vs State Govt. Of Nct Of Delhi on 3 April, 2025

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision:

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BAIL APPLN. 280/2025

ASHWANI KUMAR @ ASHU

Through: Mr. Murari Tiwari, Advoc

versus

STATE GOVT. OF NCT OF DELHI

Through: Ms. Manjeet Arya, APP wi
Vishal Malik, SWR/SPL. C

CORAM:

JUSTICE GIRISH KATHPALIA

J U D G M E N T (ORAL)

1. I have heard learned counsel for petitioner and learned prosecutor, assisted by the Investigating Officer. Since chargesheet in compliance with last order was not filed, the same is produced before me today.

2. The accused/applicant, suffering incarceration since 20.11.2023 seeks to be released on bail in case FIR No. 258/2023 of PS Special Cell for the offence under Section 22/29 NDPS Act. Broadly speaking, the allegation against the accused/applicant is that on his statement in police custody, 13 cartons of Alprazolam (commercial quantity) were recovered.

3. Learned counsel for petitioner commenced his submissions stating that the accused/applicant held license to store and sell Alprazolam, because BAIL APPLN . 280/2025 Page 1 of 4 pages GIRISH KATHPALIA Digitally signed by GIRISH KATHPALIA DN: c=IN, o=HIGH COURT OF D E L H I , o u = D E L H I H I G H C O U R T , 2.5.4.20=8401dd889b27a77b2f65ffffe4afec45569af3962c6fb4835d435f97626cacca, p o s t a l C o d e = 1 1 0 0 0 3 , s t = D E L H I , serialNumber=D3E86796451EC45Co7B5D15570996B40F8oCBD2EEE60402C487965FF801E26FA, cn=GIRISH KATHPALIA Date: 2025.04.03 17:50:51 -07'00' he is a distributor of medicines. It was further submitted by learned counsel for accused/applicant that the said license got expired in July 2023, but could not be got renewed due to certain disputes between the accused/applicant and his partner.

4. In view of above submissions, I specifically asked, and learned APP on instructions of the Investigating Officer stated that copy of the said license was not delivered to the Investigating Officer by the accused/applicant. It was found surprising that the accused would not supply to the Investigating Officer a document which supports his case. But the Investigating Officer firmly stated that copy of the said license was not furnished to him.

5. In response, learned counsel for petitioner pointed out even the page number of the chargesheet on which copy of that license is placed. Upon perusal of the chargesheet produced by learned prosecutor, counsel for petitioner was found correct. Apparently, the Investigating Officer did not even bother to see the file before coming to the court. And that shows scant respect for liberty of an individual. In response to a specific query, the Investigating Officer also stated that he did not get the said license verified despite copy thereof being on investigation record.

6. Things do not stop there.

7. The chargesheet bears the recovery memo of the 13 cartons of BAIL APPLN . 280/2025 Page 2 of 4 pages GIRISH KATHPALIA DN: c=IN, o=HIGH COURT OF DELHI, ou=DELHI HIGH COURT, 2.5.4.20=8401dd889b27a77b2f65ffffe4afec45569af3962c6fb4835d435f97626cacca, p o s t a l C o d e = 1 1 0 0 0 3 , s t = D E L H I , serialNumber=D3E86796451EC45Co7B5D15570996B40F8oCBD2EEE60402C487965FF801E26FA, cn=GIRISH KATHPALIA Date: 2025.04.03 17:50:32 -07'00' Alprazolam. But that recovery is admittedly not from the premises of the accused/applicant. That recovery is from the office of some transporter. On being asked as to what is the evidence of connection between the accused/applicant and the transporter, the Investigating Officer submitted that there is a statement of Sunil, a TSR driver, who used to deliver the cartons on directions of the accused/applicant. On being asked to show that statement of Sunil, the Investigating Officer showed the Case Diary annexed with the chargesheet. The Case Diary, as expected consists of numbered pages. Statement of Sunil is at Case Diary no. 68A. The Case Diary no. 68 bears statement dated 26.10.2023 of one Anil Kumar and Case Diary no. 69 bears statement dated 20.11.2023 of one ASI Rajesh Rana. Statement of Sunil is dated 07.11.2023. There is nothing on record, nor explained, to rule out the possibility that statement of Sunil was subsequently inserted by giving the Case Diary no. 68A instead of placing that statement at Case Diary no. 69.

8. At this stage, I must also record a cautious rider that the above observations are only prima facie in nature and limited to the consideration of liberty of the accused/applicant. These observations shall have no bearing on the final outcome of the trial.

9. In view of above circumstances, I find no reason to further deprive the accused/applicant liberty. Therefore, the application is allowed and the accused/applicant is directed to be released on bail subject to his furnishing personal bond in the sum of Rs. 50,000/- with one surety in the like amount BAIL APPLN . 280/2025 Page 3 of 4 pages GIRISH KATHPALIA DN: c=IN, o=HIGH C O U R T O F D E L H I , o u = D E L H I H I G H C O U R T , 2.5.4.20=8401dd889b27a77b2f65ffffe4afec45569af3962c6fb4835d435f97626cacca, p o s t a l C o d e = 1 1 0 0 0 3 , s t = D E L H I , serialNumber=D3E86796451EC45Co7B5D15570996B40F8oCBD2EEE60402C487965FF801E26FA, cn=GIRISH KATHPALIA Date: 2025.04.03 17:50:18 -07'00' to the satisfaction of the learned trial court.

10. Copy of this order be immediately transmitted to concerned Jail Superintendent for being conveyed to the accused/applicant.

2.5.4.20=8401dd889b27a77b2f65ffffe4afec45569af3962c6f KATHPALIA b4835d435f97626cacca, postalCode=110003, st=DELHI, serialNumber=D3E86796451EC45C07B5D15570996B40F80CBD2EEE60402C487965FF801E26FA, cn=GIRISH KATHPALIA Date: 2025.04.03 17:49:55 -07'00' GIRISH KATHPALIA (JUDGE) APRIL 3, 2025/rk BAIL APPLN . 280/2025 Page 4 of 4 pages