

Azeem Ahmed vs Narcotics Control Bureau (Ncb) on 27 March, 2025

Author: Neena Bansal Krishna

Bench: Neena Bansal Krishna

* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: March 25th

Pronounced on: March 27th

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BAIL APPLN. 540/2025

AZEEM AHMED

S/o Tanveer Ahmed

R/o B-92, 5A, Borari,

New Tihri, Uttrakhand.

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Through: Mr. M.L. Yadav, Mr.
Chand, Mr. Anant C
Mr. P.C. Arya, Mr.
Ahlawat, Mr. Prabh
and Mr. Parkash Ar
Advocates.

versus

NARCOTICS CONTROL BUREAU (NCB)

Delhi Zonal Unit West Block-1,

Wing No.7, R.K. Puram,

New Delhi-110066.

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Through: Mr. Arun Khatri, S
with Shelly Dixit
Sebastian, Advocat

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT

NEENA BANSAL KRISHNA, J.

1. The Bail Application under Section 483 of the Bhartiya Nagrik Suraksha Sanhita, 2023 („B.N.S.S. 2023 hereinafter) read with Section 439 of the Code of Criminal Procedure, 1973 („Cr.P.C. hereinafter) has been filed to seek Regular Bail in Case No. VIII/38/DZU/2021 , under Sections 21/22/23/25/27A & 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 („NDPS hereinafter), registered at Police Station Narcotics Control Bureau („NCB hereinafter) R.K. Puram, New Delhi.

2. As per the case of the Prosecution, information was received on 25.04.2022 by Amrit Kumar Tiwary, Superintendent, NCB-Delhi Zonal Unit („DZU hereinafter) from Sh. Harish Upadhayay, Deputy Superintendent, Gujarat, ATS that a suspected person namely Md. Imran was transporting narcotic drugs in an MG Hector Car bearing Registration No. HR 87E 1111 from Muzaffarnagar scheduled to arrive at Delhi on the intervening night of 25.04.2022 and 26.04.2022 and a substantial quantity of narcotics drugs could be recovered.

3. This information was reduced in writing by SI Amit Kumar Tiwary and was put before Sh. Kuldeep Sharma, Assistant Director who directed Sh. Rahul Kumar Purbey, IO to constitute a raiding team. Thereafter, a joint team of NCB, DZU and ATS Gujarat was divided into three groups for surveillance wherein one group was stationed at Meerut Toll Plaza, Second group was stationed at Daurala Toll Plaza, NH-58 and third group consisting of IO Sh. Rahul Kumar Purbe, , IO Sh. Rajeev Sehrawat, Sepoy Dharmender Singh and Rajbir were stationed at Red Light below the Bridge Bus stand, Sarai Kale Khan, Delhi. At around 05:50 AM, the third surveillance group saw the Car bearing Registration No. HR 87E 1111 coming from the Rajghat side. As soon as the vehicle reached Red Light, Sarai Kale Khan the team gathered near the vehicle and requested the driver to come out of the car. The driver disclosed his name as Mohd. Imran resident of H. No. 1414/3 Khala Par, Kidwai Nagar, Muzaffarnagar, UP. On being asked by Sh. Rahul Kumar Purbey about his involvement in the drug trafficking business, Md. Imran disclosed that he has been involved in the same and was carrying 1 Kg of Heroin in the Car. Since the matter was sensitive, he was asked to accompany the officials to NCB-DZU Office, New Delhi along with his vehicle/car MG Hector, for further investigation.

4. At around 06:30 AM, the NCB team along with Md. Imran reached the NCB-DZU office where the officials further requested Md. Imran for personal search, which he declined. The search of vehicle MG Hector was conducted during which a light grey coloured packet on which „Flipkart was written, was found from the trunk of the car. On being questioned, Md. Imran disclosed that the packet contained Narcotics drugs. The packet was cut-open, and a transparent polythene was recovered which contained brown coloured powder. The same substance was tested using the D.D. Kit and the Test gave a positive result for the presence of Heroin.

5. The substance was seized under Panchnama. On weighing, it was found to weigh 1 kg i.e. a commercial quantity under the NDPS Act and the same was kept inside one marking cloth and made into a Pulinda and given the Mark-A. The packing material on which Flipkart was written was also made into Pulinda and given Mark-B. Then white colour slips were pasted on the pullindas with Mark- A and B which were signed by Sh. Rahul Kumar Purbey, IO and Mohd. Imran and the same was sealed with the seal of Narcotics Control Bureau DZU, the Panchnama was prepared on the spot.

6. On 26.04.2022, the IO recorded the disclosure. On further investigations, Md. Imran revealed about the co-accused Razi Haider Zaidi and also informed about his godown located at Sarswati Colony near Jaroda Village Bus Stand, NH-58 Muzaffarnagar, UP („Muzaffarnagar Godown) and possibility of recovery of huge quantities of contraband. It was further disclosed that co-accused Razi Haider Zaidi was the owner of the seized MG Hector Car bearing No. HR 87E 1111 and was

associated in drug smuggling and illicit trafficking of Heroin along with others. Md. Imran also gave Razi Haider Zaidi's address in Delhi and claimed that if the search of the house is conducted, then he may be apprehended along with recovery of psychotropic substances.

7. Accordingly on his information, a raid was conducted on 26.04.2022 at Muzaffarnagar Godown, the lock of the godown was opened by accused Mohd. Imran with the help of key which was in his possession. On opening the door of the godown, accused Mohd. Imran pointed out three blue colour plastic jerry-cans, and out of those jerry-cans, 17 packets containing Heroin were recovered. Further on examining one more gunny bag, 17.250 Kgs of substance which was later found to be Heroin, was also recovered. Thereafter, on further search, blue colour gunny bag was recovered containing medicinal powder weighing 3.650 Kgs, suspected to be medicinal powder. Also, a powder was recovered weighing 2.750 Kgs, which was later on disclosed as Acetic anhydride. The Panchnama was prepared at the spot and the said contraband was taken into custody.

8. On 27.04.2023, on the basis of the disclosure, the raiding team along with Delhi Police officials went to Razi Haider Zaidi's rented accommodation in Okhla Vihar, Jamia Nagar, New Delhi where the search of the house was conducted in the presence of family members of co-accused Razi Haider Zaidi. However, nothing incriminating was recovered.

9. Thereafter, another statement of Mohd. Imran was recorded wherein he disclosed the names of two persons of Afghan origin and also admitted his guilt and he was arrested in the present case on 27.04.2022 at 22:30 PM.

10. Further, on 05.05.2022 an Application for interrogation of Razi Haider Zaidi, Azeem Ahmed, Qari Hamidullah and Md. Hakimi Salimi, who were already arrested in crime No. VIII/39/DZU/2022, were examined after the permission of the Hon'ble court. During interrogation, their statements were recorded wherein they disclosed about their involvement in the drug trafficking.

11. Subsequently, on 08.05.2022, statement of the co-accused u/s 67 NDPS was recorded wherein he disclosed about the applicant Azeem Ahmed and stated that about 50 lacs of sale proceed of the drugs, was transferred by Azeem to Shahid through one Riyazu Bhai through hawala and that the said amount was handed over to Azeem by Imran after sale of drugs. The said Applicant was already in judicial custody when the Investigating Agency was interrogating the Applicant on 05.05.2024.

12. That the Ld. Special Judge, NDPS, North Delhi dismissed his bail Application vide Order dated 13.01.2025 on the ground that there is a definite bar of Section 37 NDPS Act as commercial quantity of contraband was recovered.

Grounds:

13. The Applicant has sought bail on the grounds that he has been falsely implicated. Further, he was arrested by the Investigating Agency on 05.05.2022 and has already been in judicial custody for 2 years 10 months.

14. It is asserted that there is no recovery of any alleged contraband or money from the Applicant. The only role attributed to the Applicant as per the prosecution, is that the Applicant has financial transactions with one of the co-accused namely Razi Haider Zaidi amounting to an amount of Rs. 11,5000/- on 16.03.2022, which has to be examined and dealt with at the stage of trial.

15. Further, as per the prosecution, there is a financial transaction of Rs. 6 lakhs between the Applicant with co-accused Deepak Khurana, but it is explained by the Applicant that this transaction is a direct Bank Transaction with the wife of the co-accused Deepak Khurana, for the purchase of a Honda City car. It is further submitted that there is no recovery from Deepak Khurana either and the connection of these transactions with the contraband, has to be examined at the stage of trial.

16. It is further submitted that the present Applicant has been granted bail in RC-VIII/39/DZU/2021 by a co-ordinate Bench of this Court vide Order dated 30.01.2025 which is an interconnected case with similar allegations of transaction of Rs. 11,500/-.

17. The Applicant-Azeem Ahmed was granted a clean chit by the prosecution in the state of Gujrat, where the Applicant was falsely implicated in a similar matter involving the co-accused Razi Hider Zaidi. As per the Investigating Agency, in the above said matter in Gujrat in the case of ATS, Third, Crime Registration No. 02/2022, it has been mentioned that no evidence has been found against the applicant Azeem Ahmed and he was discharged by the Hon'ble Court of Special Judge (N.D.P.S) of Kutch District, Bhuj-Kutch due to no evidence being found by the prosecution against the Applicant.

18. It is also submitted that the co-accused in case VIII/39/DZU/2021 namely Shamim Ahmed and Rajender Prasad Sharma have been granted bail by this Court vide Order dated 12.02.2024 in Bail Application No. 2840/2023 (Shamim Ahmed) and vide Order dated 10.04.2024 in Bail Application No. 2291/2023, respectively. Therefore, bail is also sought on the ground of parity with the co-accused.

19. It is submitted that the statement of the Applicant as well as the statement of the co-accused, cannot be read against the Applicant as the same has no evidentiary value in the eyes of the law. Reliance for the same is placed on Toofan Singh v. State of Tamil Nadu CrI. Appl. No. 152/2013.

20. Further, the Applicant runs a business named Tehri Automobile Workshop situated at Sai Chowk Bairari, Uttarakhand which was established 30 years ago and there is no connection of the Company or the Applicant, with the present case.

21. Lastly, it is submitted that investigation has been completed and the Chargesheet stands filed and the custody of the Applicant is no longer necessary. The Applicant is not in the capacity of threatening the witness or tampering with the evidence. The Applicant is a law-abiding citizen, has a clean record and has deep roots in society. Therefore, regular bail is sought.

22. The Respondent/ NCB in its Status Report has submitted that the Accused/Applicant was not entitled to bail on the ground that he had approached the Court with unclean hands and had not disclosed the particulars of dismissal of his first bail Application.

23. The bail was further opposed on the ground that the recovery of Heroine was of commercial quantity and the offence was committed in criminal conspiracy of all the accused persons.

24. It was further submitted that provisions of section 37 of the NDPS Act are attracted in the present case, mandating satisfaction of twin conditions for grant of bail Application, which is liable to be dismissed.

25. Reliance for the same is placed on State of Kerala v. Rajesh AIR 2020 SC 721. Reliance is also placed on State of Madhya Pradesh v. Kajaad (2001) 7 SCC 673 to state that under Section 37 of the Act negation of bail is the Rule, and its grant an exception. Further reliance is placed on Babua @Tazmul Hossain v. State of Orissa 2001 AIR SCW 682 (SC); and Union of India through NCB, Lucknow v. Md. Nawaz Khan Crl. Appl. No. 1043/2021.

26. It is also submitted that Azeem is the biological brother of Shahid Ahmad also known as Qazi Wadood who is involved in sending contraband to India and financial transactions have been identified between the accused Azeem and Razi Haider Zaidi in the sum of Rs.36,500/- on 16.06.2019, Rs. 35,000/- on 22.06.2019 and Rs. 11,500/- on 16.03.2022. A diary has also been recovered from Razi Haider Zaidi which contained Azeem's name.

27. It is submitted that Call Data Records and Customer Data Records reports confirm that the Applicant was in regular contact with other co-accused individuals to facilitate and conduct illegal drug trafficking activities.

28. It is further submitted that during the investigations, the Applicant Azeem Ahamed tendered his statement u/s 67 of the NDPS Act wherein he disclosed about his Firm i.e. QSA Infrastructure and a Garage in Uttarakhand, and about his bank details. Further, on 09.05.2022, another statement of Azeem was recorded u/s 67 of NDPS Act, wherein he disclosed that about Rs. 8 lakhs was transferred to Shahid through Razi Haider by hawala. It was also disclosed that sometimes he used the drug money for purchasing clothes, pearls etc. required by Shahid at Dubai for his business and same were sent to Shahid through his other associates/known persons to Dubai. He further disclosed that he managed a group on WhatsApp with the name QSA wherein they used to maintain details of the sale proceeds of the drugs which they used to share with each other. He further disclosed the Dubai address of Accused Shahid and location of his shop in Dubai. During his statement, he identified co-accused Mohd. Imran and Razi Haider as the persons who were involved in the drug trafficking and looked after the drug business of Shahid in India.

29. The Applicant/Accused is actively involved in the commission of offence, abetment and criminal conspiracy of this case and his complicity is apparent as per the totality of the circumstances and investigation carried out by N.C.B. in this case.

30. It is further submitted that the Accused/Applicant has not shown any reasonable ground for believing that he is not guilty of such offence and that he is not likely to commit any offence while released on bail; thus the Bail application is liable to be dismissed.

31. Submissions heard and the record perused.

32. The parameters for grant of bail to an accused under the NDPS Act, 1985 have been provided in various cases by the Supreme Court. The Supreme Court in *Collector of Customs v. Ahmadalieva Nodira*, (2004) 3 SCC 549 has observed as under:

"6. As observed by this Court in *Union of India v. Thamisharasi*, (1995) 4 SCC 190, clause (b) of subsection (1) of Section 37 imposes limitations on granting of bail in addition to those provided under the Code. The two limitations are : (1) an opportunity to the Public Prosecutor to oppose the bail application, and (2) satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail.

7. The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant of opportunity to the Public Prosecutor, the other twin conditions which really have relevance so far as the present accused-respondent is concerned, are :

the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence..."

33. Further, in *State of Kerala v. Rajesh*, (2020) 12 SCC 122, the Supreme Court while discussing the expression „reasonable grounds has observed as below:

"20. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for."

34. As per the case of the Prosecution, apparently there is drug syndicate being run for trafficking Heroine, and the current Applicant is a part of the same thereby mandating the satisfaction of the stringent twin conditions under Section 37 of the NDPS Act, 1985 which are necessarily required to be satisfied.

35. Essentially, the bail is sought on the primary ground that there has been no recovery of any contraband or incriminating material from the Applicant and he has been implicated in the present case based on Disclosure Statement dated 27.04.2022 Co-accused Razi Haider Zaidi under Section 67 of the NDPS Act.

36. In the present case, the accused Azeem is the real brother of Shahid Ahmad @ Qazi Wadood, who allegedly sent contra-band to India. NCB/Prosecution has solely relied on the bank transaction between accused Azeem and Razi Haider Zaidi i.e. Rs.36,500/- on 16.06.2019, Rs. 35,000/- on 22.06.2019 and Rs. 11,500/- on 16.03.2022 to cite the involvement and role of the accused in the alleged conspiracy.

37. Prima facie there is nothing on record to show that the money received by the Applicant on 16.03.2022 was tainted and proximate to the seizure of Heroine seized from Razi Haider 27.04.2022. Further, there is financial transaction of accused Azeem with the wife of co-accused Deepak Khurana of Rs. 6 lakh which is explained as payment for purchase of a Honda City car. Therefore, the character of these transactions and its connection with conspiracy of drug trafficking, is a matter to be proved at stage of Trial.

38. The Applicant has already been granted bail in Case No. VIII/38/DZU/2022 by this Court vide Order dated 30.01.2025.

39. As per the record, the petitioner has been in custody since 05.05.2022, and charges are yet to be framed in the matter. It is evident that trial will take a long time to conclude. There is no likelihood of the Applicant fleeing from justice, as he has his business in India. Further, the Chargesheet stands filed and no purpose would be served in keeping the Applicant under custody.

40. However, it is opposite to refer to the decision of the Apex Court in Union of India v. K.A. Najeeb (2021) 3 SCC 713 wherein it was observed that courts are obligated to release the undertrial prisoners on bail if there is a delay in trial. Further, it was observed that statutory restrictions do not exclude the discretion of Constitutional Courts to grant bail on the grounds of violation of Fundamental Rights enshrined in Part III of the Constitution of India.

41. In the recent decision of Manish Sisodia v. Central Bureau of Investigation, 2023 SCC OnLine SC 139, the Apex Court reiterated that that right of liberty guaranteed under Article 21 of the Constitution of India is a sacrosanct right which needs to be accepted even in cases where stringent provisions are incorporated through special laws. It was held that prolonged incarceration before being pronounced guilty of an offence, should not be permitted to become punishment without trial. It was further observed that fundamental right of liberty provided under Article 21 of the Constitution is superior to statutory restrictions and reiterated the principle that "bail is the rule and

refusal is an exception".

42. Considering the above-mentioned facts and in the light of the aforesaid discussion, the Petitioner is admitted to Regular Bail in FIR No. VIII/38/DZU/2021 under Sections 21/22/23/25/27A/29 of NDPS Act, 1985 upon his furnishing a personal bond in the sum of Rs. 50,000/- and one surety of the like amount to the satisfaction of the learned Trial Court, subject to the following conditions:

- (i) Applicant shall not leave Delhi/NCR without prior permission of the Court.
- (ii) Applicant shall appear before the Court as and when the matter is taken up for hearing;
- (iii) Applicant shall provide his mobile number and also the mobile number of his surety to the IO concerned, both of which shall be kept in working condition at all times;
- (iv) Applicant shall inform the IO and the Jail Superintendent the address where he shall be available in Delhi;
- (v) Applicant shall not try to contact, threaten or influence any of the witnesses of this case; and
- (vi) Applicant shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses.

43. Nothing in this Order shall be construed as an expression of opinion on the merits of the pending matter.

44. A copy of this order be sent to the concerned Jail Superintendent as well as to the Trial Court.

45. Accordingly, the present Bail Application is disposed of.

(NEENA BANSAL KRISHNA) JUDGE MARCH 27, 2025