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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of Decision: 03rd November, 2026***

\# **CNR No. DLHC010384692026**

\+ BAIL APPLN. 3403/2026

AFSANA .....Petitioner

Through: Mr. Deepak Raj, Advocate
Mob: 9650891289
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versus

STATE OF NCT OF DELHI THROUGH PS BHALSWA DAIRY
.....Respondent

Through: Mr. Ajay Vikram Singh, APP for the State.
(M): 9868632122
Email: ajayvikramsingh563@gmail.com
SI Sohan Thakur, ANS/OND
Mob: 9716702170
Email: sohan971725@gmail.com

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

MINI PUSHKARNA, J. *(Oral):*

1. The present application has been filed on behalf of the petitioner, i.e., Afsana W/o Abdul Majid, under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS"), seeking regular bail in respect of the First Information Report ("FIR") being *FIR No. 590/2025* dated 29th August, 2025,

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registered at Police Station ("PS") Bhalswa Dairy, Outer North District, Delhi, under Sections 21/25/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("NDPS Act").

2. The case being *SC 125/2026*, in respect of the aforesaid FIR, is pending adjudication before the Special Judge (NDPS)/Additional Sessions Judge, North District, Rohini Courts, Delhi, and is currently at the stage of arguments on charge.

3. The petitioner had previously moved two regular bail applications before the Special Court, which were dismissed *vide* orders dated 04th November, 2025, and 29th April, 2026, respectively.

4. The prosecution case, as culled out from the material on record, is as follows:

4.1. On 29th August, 2025, a police official at PS Bhalswa Dairy received information from a secret informer that a woman named Afsana, i.e., the petitioner, residing at Jahangirpuri, Delhi, was involved in the supply of heroin in bulk. The informer further revealed that the petitioner would arrive behind *Kalander Colony, Service Road, Bhalswa Dairy, Delhi*, between 11:30 AM and 12:30 PM, to supply heroin from her carrying bag to one of her customers.

4.2. After the said secret information was verified, a raiding party comprising police officials was constituted, and a trap was laid behind *Kalander Colony, Service Road, Bhalswa Dairy, Delhi*.

4.3. At about 11:45 AM, a woman carrying a bag in her right hand was seen coming from the side of *Jhanda Chowk, Bhalswa Dairy, Delhi*. Upon seeing the woman, the secret informer identified her as the petitioner. The petitioner thereafter reached behind *Kalander Colony, Service Road, Bhalswa Dairy,*

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Delhi, and started waiting for someone.

4.4. After some time, the petitioner started going towards *Jhanda Chowk, Bhalswa Dairy, Delhi*, when she was overpowered by a constable on the instruction of a sub-inspector at about 11:52 AM.

4.5. Upon checking the carrying bag of the petitioner, a heavy black polythene packet was found, inside which was a transparent white polythene packet containing a brown powdery substance.

4.6. The recovered substance, when tested with a Field Testing Kit, was detected to be heroin and weighed 300 grams, along with the weight of the transparent white polythene packet.

4.7. During interrogation, the petitioner disclosed that she used to procure heroin from one Mansi, who was a resident of Burari, and her husband, namely, Narender, who would come to *Petrol Pump, Burari, Delhi*, for the supply of heroin on the instructions of his wife.

4.8. During the further course of investigation, Narender and his wife, i.e., Mansi, were arrested and 712 grams of heroin were recovered during search of their house. On interrogation, Mansi disclosed that she used to procure heroin from one Santosh for further supply.

4.9. Subsequently, at the instance of Mansi, a raid was conducted at the house of Santosh, but the same was found locked.

4.10. During the further course of investigation, acting on secret information, the police arrested Santosh on 05th September, 2025, and recovered 97 grams of heroin from her house. On interrogation, Santosh disclosed that she used to procure heroin from one Anil for further supply to Sonia and Nitin, both residents of Andha Mughal, Delhi.

4.11. At the instance of Santosh, raids were conducted at the houses of Sonia

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and Nitin, but their houses were found locked.

4.12. Thereafter, Anil was arrested on 09th September, 2025, and 1.992 grams of heroin were recovered from his house.

4.13. During the course of investigation, Sonia and Nitin were arrested in connection with *FIR No. 45/25*, registered at PS Crime, Delhi, under Section 21 of the NDPS Act. Subsequently, permission to interrogate and formally arrest Sonia was obtained, and she was formally arrested on 16th October, 2025. Nitin was also formally arrested on 22nd October, 2025.

4.14. After completion of the investigation, a Chargesheet dated 20th February, 2026, was filed by the Investigating Officer ("IO") in respect of the present FIR. A Forensic Science Laboratory ("FSL") Report dated 07th April, 2026, has also been filed.

4.15. The brief details of the narcotic drugs recovered from the co-accused persons in the present case are as follows:

"xxx xxx xxx

Name	Date of arrest	Recovery
Afsana	**29/08/25**	**300 Gram Heroin**
Narender and his Mansi @ Jyoti	30/05/25	712 Gram Heroin recovered from house searched
Santosh	05/09/25	97 Gram Heroin
Anil @ Bhola	09/09/25	1.992 Gram Heroin
Renu Nagia @ Sonia Nagia	16/10/2025	-
Nitin @ Arjun	22/10/2025	-

xxx xxx xxx"

5. On behalf of the petitioner, it is submitted as follows:

5.1. The investigation in the present case is complete and the IO has filed a Chargesheet before the Special Court.

5.2. No independent witnesses were present during the search of the petitioner, which undermines the claim of the prosecution that the search and

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seizure were valid.

5.3. Further, Section 105 of the BNSS makes the recording of search and seizure through audio-video electronic means essential. However, no videography was provided to the petitioner.

5.4. The petitioner is a woman and the mother of two minor children, aged five years and two years, who are entirely dependent on her care and custody. She is the sole bread earner of the family, and her husband neither resides with her, nor provides any financial support.

5.5. The petitioner also has no criminal antecedents.

5.6. The trial is likely to take a long time, given that the examination of 23 witnesses has not yet commenced.

5.7. The FSL Report has established that the substance recovered from the petitioner, which is marked as Exhibit 'A1', does not contain the requisite chemical, namely, 'Diacetylmorphine', which is classified as heroin under the NDPS Act.

6. *Per contra*, learned Additional Public Prosecutor ("APP") appearing for the State vehemently opposes the present application on the ground that 300 grams of heroin were recovered from the petitioner based on secret information and that, pursuant to her disclosure statement, 712 grams of heroin were recovered from the house of Mansi and Narender.

7. As regards the absence of videography, he submits that the requirement of video recording of the search and seizure operation is directory and not mandatory.

8. He further submits that the quality of heroin recovered from the petitioner may have degraded on account of environmental conditions, and that there is a strong apprehension that the entire contraband is

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'Diacetylmorphine'.

9. He also draws attention to the fact that the petitioner has been in custody for only approximately one year and that charges are yet to be framed by the Special Court.

10. Having heard learned counsel appearing for the parties, at the outset, this Court notes that the recovery involved in the present case was allegedly of 300 grams of heroin. However, as per the FSL Report, the substance recovered from the petitioner has been identified as containing '6-Monoacetylmorphine', 'Acetylcodeine', 'Morphine', 'Codeine', 'Noscapine', 'Clozapine', 'Trimethoprim', 'Caffeine' and 'Acetaminophen', which do not fall within the classification of heroin under the NDPS Act.

11. In this regard, reference may be made to the judgment in the case of ***Aditya Kumar Versus Union of India Through Narcotic Control Bureau, Lucknow, 2022 SCC OnLine All 625***, wherein it was held as follows:

> *"xxx xxx xxx*
>
> ***21.*** *Analyzing the facts of the present case for the purpose of deciding the applicants claim for bail in light of the aforesaid law, I find the following facts to be relevant at this stage:—*
> *(i) Although the search and seizure was conducted at Bareilly Railway Station there is no independent witness of the alleged recovery.*
> *(ii) The constables of Railway Police Force cannot be said to be independent witnesses.*
> *(iii) Although it is mentioned in the recovery memo that search was conducted in presence of a Gazzetted Officer Sri. Harjeet Singh "ADEN/BE', but the recovery memo does not bear signatures of the Gazetted Officer.*
> *(iv) The recovery memo claims that in test and re-test of the substances conducted by the DD kit, both times it was found to be Heroin.*
> *(v) The Intelligence Officer, N.C.B. Zonal Unit Lucknow, has stated on oath that the sample was tested by the Government*

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Laboratory and the report states that the samples under reference answered positive test for Heroin. However, a copy of the said test report has not been filed by the NCB.

(vi) The test report filed by the applicant categorically states that the substance was not found to be Heroin but it was Morphine.

(vii) Heroin and Morphine are different and distinct substances. Heroine ((Diacetylmorphine)) is mentioned at Serial No. 56 of the Notification dated 16-07-1996 specifying small quantity and commercial quantity issued under Section 2 (vii) (a) and 2 (xxiii) (a) of the Act and Morphine is mentioned at Serial No. 77 thereof.

22. The aforesaid facts raise doubts against the prosecution case and it gives rise to a reasonable ground for prima facie believing at this stage that the applicant may not be held guilty of the alleged offences*.*

xxx xxx xxx"

(Emphasis Supplied)

12. Similarly, in the order dated 23rd December, 2020, passed by a Coordinate Bench of this Court in ***BAIL APPLN. 3576/2020***, titled as ***Dharmender Versus The State***, it was held as follows:

"xxx xxx xxx

4. The FSL report has been furnished and the conclusion of the said report is set out below:-

"RERSULTS OF EXAMINATION REPORT

On Chemical, TLC & & GC-MS examination (1) Exhibit 'A-1' was found to contain 'Acetaminophen', 'Dextromethorphan', 'Codeine', 'Vcetylcodeine' & '6- monoacetylmorphine' & 'Trimethoprim'.

(ii) Exhibit 'B-1' was found to contain 'Acetaminophen.'"

5. ***It is apparent from the above that the sample Marked as B-1 (which was allegedly drawn from the pouch marked as 'B' did not contain any Heroin. Insofar as sample A-1 is concerned, it is contended on behalf of the prosecution that the same contained a degraded form of Heroin.***

6. The learned counsel appearing for the applicant submits that

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even if it is assumed that the samples were correctly drawn, the analysis of sample B1 indicates that pouch Marked-B did not contain Heroin, but acetaminophen. He submits that none of the substances allegedly found in sample A-1 is diacetylmorphine which is the chemical compound commonly known as Heroin

7. ***Undisputedly, the FSL's report raises a serious question to the case of the prosecution regarding both pouches Marked as 'A' and 'B'. The result of the Field Testing Kit is also not confirmed by the FSL report. The allegation of the prosecution that both pouches contain identical substances is not supported by the FSL report***

xxx xxx xxx"

(Emphasis Supplied)

13. Furthermore, in the recent case of ***Taslima Alias Putti Versus State NCT of Delhi, 2026 SCC OnLine Del 605***, a Coordinate Bench of this Court held as under:

"xxx xxx xxx

12. *The FSL report dated 19.09.2025 of the recovered contraband, which was conducted after the results of the field-testing report, states as under:—*

"... ...Kindly refer to letter 379 and 380/Inspector/Narcotics Cell/OND dated 21/08/2025, on the subject cited above. The following clarification is enclosed:

1. The exhibits did not contain Diacetylmorphine, commonly known as Heroin.

2. The presence of Monoacetylmorphine (ester of Morphine), Acetylcodeine (ester of Codeine) is generally attributable to hydrolysis of crude Heroin.

3. As per NDPS Act, 'esters' of the drugs listed in the Act (Morphine and Codeine) also are punishable. ..."

13. As per above, though the preliminary field testing of the alleged contraband said the recovered substance was 'Heroin', however, the latter FSL report conclusively indicated absence of 'Diacetylmorphine', which is a requisite for the substance to be classified as 'Heroin' under the NDPS

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> ***Act. Moreover, even the FIR states "…When the SI checked the powder like substance found in the waxy bag with the field testing kit, it was found to be Heroin. …". The said position is not disputed by the prosecution. Based thereon, there is a more than prima facie doubt raised, more so, since it goes into the root of the matter and is regarding the very foundation of the prosecution's case. That, involving the period of incarceration, the investigation being already over and chargesheet having been filed almost fifteen months prior, and the evidence yet having not commenced coupled with the fact that the trial is likely to take time, and the rigors of Section 37 of the NDPS Act also hanging in doubt, are grounds for furnishing bail to the applicant at this stage***.
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

14. Accordingly, in view of the facts and circumstances of the present case, the substance recovered from the petitioner is not contraband as it does not contain 'Diacetylmorphine', and the rigours of Section 37 of the NDPS Act are not applicable.

15. Pertinently, the co-accused person, namely, Santosh, from whom 97 grams of heroin was recovered has also been released on bail.

16. Further, it is noted that the investigation in the present case is complete and the Chargesheet has already been filed. The trial has not yet commenced, and none of the 23 witnesses, as cited by the prosecution, have been examined till date. Therefore, the conclusion of the trial is likely to take considerable time.

17. Additionally, as per the Nominal Roll dated 29th September, 2026, the petitioner has already undergone one year and one month of custody, as on 28th September, 2026, and the conduct of the petitioner in jail is satisfactory.

18. The apprehension of the State that the petitioner may influence witnesses or indulge in any similar kind of offence can be addressed by

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imposing appropriate conditions.

19. For the aforesaid reasons, the present application is allowed and the petitioner is released on regular bail in connection with *FIR No. 590/2025* dated 29th August, 2025, registered at PS Bhalswa Dairy, Outer North District, Delhi, under Sections 21/25/29 of the NDPS Act, subject to furnishing a bail bond in the sum of Rs. 50,000/-, with one surety of like amount, to the satisfaction of the Special Court/Duty Magistrate, and further subject to the following conditions:

a. The petitioner shall appear before the Special Court on each and every date of hearing.

b. The petitioner shall ordinarily reside at the address as per prison records, and shall not change the address without informing the concerned IO/Station House Officer.

c. The petitioner shall furnish her mobile number to the concerned IO/SHO, and shall ensure that the said mobile number remains operational and switched on at all times. The mobile number shall not be changed, nor shall the phone be switched off, without prior intimation to the IO/SHO.

d. The petitioner shall not, directly or indirectly, contact, nor visit, nor offer any inducement, threat, or promise to any of the prosecution witnesses or other persons acquainted with the facts of the case.

e. The petitioner shall not, directly or indirectly, tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial.

f. The petitioner shall not commit any offence during the pendency of the proceedings.

20. The present application is allowed and accordingly, disposed of, in the

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aforementioned terms.

21. It is clarified that any observations made in the present order are solely for the purpose of deciding the present bail application, and shall neither influence the trial proceedings, nor be construed as an expression of opinion on the merits of the case.

22. A copy of this order be sent to the concerned Jail Superintendent for information and necessary compliance.

MINI PUSHKARNA, J

NOVEMBER 3, 2026/SK/KR

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