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

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

\# **CNR No. DLHC010459322026**

\+ BAIL APPLN. 4050/2026 & CRL.M.A. 29971/2026

NARENDER .....Petitioner

Through: Mr. Pranav Prakash Sharma, Adv.
M: 7404905856

versus

THE STATE (NCT OF DELHI) & ANR. .....Respondents

Through: Mr. Ajay Vikram Singh, APP for State
M: 9868632122
SI Sohan Thakur/ANS/OND
M: 9716702170

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

MINI PUSHKARNA, J. *(Oral):*

1. The present application has been filed under Section 483 read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS"), on behalf of the petitioner, i.e., Narender, S/o Rajesh, seeking grant of regular bail in connection with the First Information Report ("FIR") being *FIR No. 590/2025* dated 29th August, 2025, registered under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("NDPS Act"), at Police Station ("PS") Bhalswa Dairy, Outer North, Delhi.

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2. Subsequently, upon completion of the investigation, a Chargesheet came to be filed by the Investigating Officer ("IO"), whereby, the petitioner herein was charged under Sections 21/25/29 of the NDPS Act.

3. This Court is informed that the petitioner had earlier preferred an application for regular bail before the Additional Sessions Judge ("ASJ") (Special Judge – NDPS Act), Rohini Courts, Delhi, which came to be dismissed *vide* order dated 09th September, 2026, passed in *IA 13/2026* in *SC 125/2026*.

4. The case being *SC 125/2026*, arising out of *FIR No. 590/2025*, is pending adjudication before the ASJ (Special Judge – NDPS Act), Rohini Courts, Delhi, and is presently at the stage of framing of charges.

5. The case of the prosecution, as emerging from the material on record, is as follows:

5.1. On 29th August, 2025, acting on secret information regarding the supply of heroin by one Afsana, i.e., co-accused no. 1, a raiding party was constituted and a trap was laid behind *Kalander Colony*, *Service Road*, *Bhalswa Dairy*, *Delhi*.

5.2. At about 11:52 AM, co-accused no. 1 was apprehended and 300 grams of heroin was recovered from the bag she was carrying. Thereafter, a case was registered and further investigation was carried out.

5.3. During the interrogation, co-accused no. 1 disclosed that she used to procure heroin from one Mansi @ Jyoti, and her husband, i.e., the petitioner herein, who used to come to the petrol pump at Burari, Delhi, to supply heroin on the instructions of his wife.

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5.4. Pursuant to the said disclosure and at the instance of co-accused no. 1, the petitioner was apprehended along with his two-wheeler vehicle, near the petrol pump at Burari, Delhi, on 29th August, 2025.

5.5. The petitioner was interrogated, and his disclosure statement was recorded in respect of the aforesaid case. In addition, his vehicle was also taken into custody by the police.

5.6. The petitioner, in his interrogation, disclosed that his wife/co-accused no. 2, knew a woman named Santosh, i.e., co-accused no. 4, who was involved in the supply of heroin. He further disclosed that co-accused no. 2 told him that there was a large profit margin in the said business and that if they started purchasing heroin from co-accused no. 4 and supplying it, they could earn significant money.

5.7. Around six months prior to the interception, co-accused no. 2 started buying heroin from co-accused no. 4. The petitioner is alleged to have supplied the same to persons as directed by his wife.

5.8. The petitioner has stated that the recovery containing 300 grams of heroin seized from co-accused no. 1 had earlier been sold to her on the instructions given by co-accused no. 3 to the petitioner and that he had supplied heroin to co-accused no. 1 on several occasions in the past near the petrol pump in Burari, Delhi.

5.9. The petitioner also disclosed that if a raid was conducted at his residence in Burari, Delhi, a significant quantity of heroin could be recovered from there.

5.10. Subsequently, at the instance of co-accused no. 1 and the petitioner herein, co-accused no. 3 was apprehended near her residence in Burari, Delhi. A search was conducted at the house of the petitioner, during which a total of

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712 grams of heroin was recovered, which was seized and deposited in the *malkhana* of PS Bhalswa Dairy. Following the said recovery, co-accused no. 3 came to be arrested.

5.11. During interrogation, co-accused no. 3 disclosed that she used to procure heroin from co-accused no. 4, who is a resident of Madipur, Delhi, for the purpose of supplying it further. At the instance of co-accused no. 3, a raid was conducted at the house of co-accused no. 4, but her house was found locked.

5.12. Thereafter, during further course of investigation and on receipt of a secret information, co-accused no. 4 was arrested on 05th September, 2025, and a recovery of 97 grams of heroin was made from her house.

5.13. During interrogation, co-accused no. 4 disclosed that she used to procure heroin from one Anil @ Bhola, i.e., co-accused no. 5, for supplying it further to Renu Nagia @ Sonia and Nitin @ Arujun, i.e., co-accused nos. 6 and 7, respectively, residing in Andha Mughal, Delhi.

5.14. At the instance of co-accused no. 4, a raid was conducted at the address of co-accused nos. 6 and 7, but their houses were found locked.

5.15. On 09th September, 2025, co-accused no. 5 also came to be arrested and a recovery of 1.992 grams of heroin was made from his house.

5.16. During the course of investigation, co-accused nos. 6 and 7 were arrested in connection with *FIR No. 45/25*, registered under Section 21 of the NDPS Act, at PS Crime Branch, Delhi. After that, permission for interrogation and formal arrest of co-accused no. 6 was obtained and she was formally arrested on 16th October, 2025. Thereafter, on 22nd October, 2025, co-accused no. 7 was also formally arrested in the present case.

5.17. The brief details of recovery in the present case are as follows:

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"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"

6. In support of the present petition, the following has been submitted on behalf of the petitioner:

6.1. The investigation in the present case is complete and the IO has filed a Final Report/Chargesheet before the Special Court.

6.2. The case as stated by the prosecution is highly doubtful and the IO has made the petitioner a scapegoat by falsely implicating him.

6.3. No independent witnesses were present during the search of the accused. Thus, the lack of independent witnesses undermines the claim of the prosecution of valid search and seizure.

6.4. The Examination Report of the Forensic Science Laboratory ("FSL") dated 07th April, 2026, has established that the substance recovered from the petitioner does not contain the requisite chemical namely, 'Diacetylmorphine', which is classified as heroin under the NDPS Act.

6.5. The FSL report explicitly identifies the alleged substance as containing '6-Monoacetylmorphine', 'Acetaminophen', 'Codeine', 'Morphine', 'Acetylcodein', 'Trimethoprim', and 'Alprazolam'. This chemical composition falls into the 'degraded' category of heroin.

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6.6. Additionally, Section 105 of the BNSS mandates that the process of search and seizure be recorded through audio-video electronic means. However, no such videography was provided to the petitioner.

6.7. The petitioner was granted interim bail *vide* order dated 08th October, 2025, passed by the ASJ (Special Judge – NDPS Act), Rohini Courts, Delhi, which was extended by way of order dated 09th September, 2025, and further extended by way of order dated 15th October, 2025. Another interim bail was granted to the petitioner *vide* order dated 10th December, 2025. Upon the expiry of the period of interim bail, the petitioner duly surrendered and did not misuse the liberty.

7. *Per contra*, learned Additional Public Prosecutor ("APP") for the State has vehemently opposed the present petition and has made the following submissions:

7.1. A substantial quantity of heroin, precisely, 712 grams of heroin was recovered from the house of the petitioner on the basis of his own disclosure statement.

7.2. The quality of heroin recovered from the petitioner may have degraded on account of the environmental conditions, however, there is strong apprehension that the entire contraband comprised of 'Diacetylmorphine'.

7.3. The petitioner has been in custody for only approximately one year and charges are yet to be framed before the Special Court.

7.4. On one of the occasions when the petitioner was granted interim bail, he surrendered five days later.

7.5. As regards the absence of videography, the requirement of video recording of the search and seizure operation is directory and not mandatory.

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8. In response, learned counsel appearing for the petitioner submitted that the delay in surrendering on the previous occasion when he was granted interim bail, was on account of some miscommunication.

9. Having heard learned counsels appearing for the parties, at the outset, this Court notes that the recovery involved in the present case pertains to 712 grams of heroin. However, as per the FSL Report, only 54 grams of the substance recovered at the instance of the petitioner contains 'Diacetylmorphine', i.e., heroin, which is an intermediate quantity of contraband in terms of the NDPS Act. As per the same report, the remaining constituents that have been identified do not fall within the classification of heroin under the NDPS Act.

10. 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*
>
> ***18**. It is plain from a bare reading of the non obstante clause in Section 37 of the NDPS Act and sub-section (2) thereof that the power to grant bail to a person accused of having committed offence under the NDPS Act is not only subject to the limitations imposed under Section 439 of the Criminal Procedure Code, 1973, it is also subject to the restrictions placed by clause (b) of sub-section (1) of Section 37 of the NDPS Act. Apart from giving an opportunity to the Public Prosecutor to oppose the application for such release, the other twin conditions viz. (i) the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence; and (ii) that he is not likely to commit any offence while on bail, have to be satisfied. It is manifest that the conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty, has to be based on "reasonable grounds".*

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19. ***The expression "reasonable grounds" has not been defined in the said Act but means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence he is charged with. The reasonable belief contemplated in turn, points to existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence (vide Union of India v. Shiv Shanker Kesari, (2007) 7 SCC 798). Thus, recording of satisfaction on both the aspects, noted above, is sine qua non for granting of bail under the NDPS Act***.

20. ***We may, however, hasten to add that while considering an application for bail with reference to Section 37 of the NDPS Act, the court is not called upon to record a finding of "not guilty". At this stage, it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive finding as to whether or not the accused has committed offence under the NDPS Act. What is to be seen is whether there is reasonable ground for believing that the accused is not guilty of the offence(s) he is charged with and further that he is not likely to commit an offence under the said Act while on bail. The satisfaction of the court about the existence of the said twin conditions is for a limited purpose and is confined to the question of releasing the accused on bail***.

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.

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(v) The Intelligence Officer, N.C.B. Zonal Unit Lucknow, has stated on oath that the sample was tested by the Government 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****.*

xxx xxx xxx"

(Emphasis Supplied)

11. Similarly, in the case of ***Dharmender Versus the State***, this Court *vide* order dated 23rd December, 2020, passed in ***BAIL APPLN 3576/2020*** 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 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***

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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)

12. Accordingly, in the facts and circumstances of the present case, the recovery of substance at the behest of the petitioner falls within the intermediary category, and thus, the rigours of Section 37 of the NDPS Act are not applicable.

13. Pertinently, it is noted that co-accused no. 4, from whom recovery of 97 grams of heroin was made has also been released on bail vide order dated 07th March 2026, passed by the ASJ (Special Judge – NDPS Act), Rohini Courts, Delhi.

14. It is further noted that investigation in the present matter is complete and a Chargesheet has already been filed. The trial has not yet commenced and charges are yet to be framed. The prosecution has cited 23 witnesses, none of whom have been examined to date. Therefore, the conclusion of the trial is likely to take considerable time.

15. The latest Nominal Roll dated 03rd March, 2026, furnished by the Jail Authorities, shows that the petitioner has already undergone 11 months and 29 days of custody as on 02nd October, 2026, and that the conduct of the petitioner has been satisfactory.

16. The said Nominal Roll also discloses *FIR No. 435/2025* registered under Sections 341/354/506/509/34 of the Indian Penal Code, 1860 ("IPC")

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at PS Burari, that is pending against the petitioner herein, and in which he has been granted bail.

17. The apprehension of the State that the petitioner can influence the witnesses or indulge in similar kind of offence can certainly be looked into by imposing certain conditions.

18. 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, Delhi, subject to the petitioner furnishing a personal 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 ("SHO").

c. The petitioner shall furnish his 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, visit, or 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 trial proceedings. The IO is directed to monitor the situation and,

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in the event of any complaint being made, to inquire into the same in accordance with law;

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

19. The present bail application is allowed and accordingly disposed of in the aforesaid terms.

20. 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.

21. A copy of the order be communicated to the concerned Jail Superintendent electronically for information and necessary compliance.

MINI PUSHKARNA, J

NOVEMBER 3, 2026/SK/KR

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