

(2025) 12 DEL CK 0016

Delhi HC

Case No: Bail Application No. 3217 Of 2025 & Criminal Miscellaneous Application No.
24936 Of 2025

Vakil Ray

APPELLANT

Vs

State(Nct Of Delhi)

RESPONDENT

Date of Decision: Dec. 3, 2025

Acts Referred:

- Narcotic Drugs and Psychotropic Substances Act, 1985- Section 8, 19, 20, 24, 27A, 37, 37(1)(b)

Hon'ble Judges: Amit Mahajan, J

Bench: Single Bench

Advocate: Ankaj Giri, Ritesh Kumar Bahri, Divya Yadav

Final Decision: Allowed

Judgement

Amit Mahajan, J

1. The present applications are filed seeking regular bail in FIR No. 515/2024 dated 30.11.2024, registered at Police Station Najaf Garh for offences under Sections 8/20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act').

2. Briefly stated, on 30.11.2024, on the basis of a secret information, a raiding party was constituted, and thereafter a raid was conducted at Plot No. 155, Krishna Vihar, Najafgarh, New Delhi. It is alleged that thereafter, the applicant Rishipal was caught coming out of the said plot with a white coloured plastic katta in his hand. Upon checking the said bag, the same was allegedly found to contain 5.050Kg of ganja. It is alleged that upon further search, two more white coloured bags were found in the said plot, and a recovery of approximately 20.93 kg of ganja was effected. A video of the search and seizure was made on the e-Sakshya App. The applicant was thereafter arrested on 30.11.2024.

3. During the course of investigation, the applicant Rishipal disclosed that the applicant Vakil Ray had supplied the contraband to him. Thereafter, during PC remand, the applicant Rishipal telephonically contacted the applicant Vakil Ray on the instructions of the police, and asked the applicant Vakil Ray to supply contraband to him. Thereafter, at the instance of the applicant Rishipal, a raid was conducted near Old Khaira Road, Near Petrol Pump, Najafgarh, Delhi and the applicant Vakil Ray along with co-accused Mukul were apprehended and were found to be holding separate bags. Upon the search of the bag in the possession of the applicant Vakil Ray, two packets wrapped in brown coloured tape were found, and a total recovery of 3.860 Kg of ganja was effected. Further, upon

the search of the bag of co-accused Mukul, three packets wrapped in brown colour tape aggregating to 5.930 kg of ganja was recovered. The videography of the search and seizure was made on the e-Sakshya App. The applicant Vakil Ray and co-accused Mukul were thereafter arrested on 03.12.2024.

4. The learned counsel for the applicant Rishipal submitted that the applicant Rishipal is innocent and has been falsely implicated in the present case. He submitted that the applicant Rishipal was living in a residential area and was caught around 11:20 AM in broad daylight, however, no independent witness was joined by the prosecution which casts a doubt on the story of the prosecution.

5. He submitted that the videography/photography of the alleged recovery was done by the police officials through e-Sakshya App. He submitted that an application was filed by the applicant Rishipal to provide a copy of the photography/videography of the alleged recovery, however, the same was dismissed with the contention that the same could not be preserved in pendrive or any other device and can only be played in court using login ID of the concerned Investigating Officer during the evidence. He submitted that the denial of a vital piece of evidence to the applicant would be a denial of fair trial.

6. He submitted that as per the version of the prosecution, the alleged recovery was effected from the rented premises of the applicant Rishipal, however, neither any rental agreement has been produced nor has the statement of the owner of the premises been recorded which renders the alleged recovery from the applicant Rishipal doubtful. He submitted that the landlord has not even been named as a witness which further casts a doubt on the case of the prosecution.

7. He submitted that while the applicant Rishipal was previously implicated in similar cases, he has been admitted on bail in all the other cases. He submitted that the applicant Rishipal was previously admitted on interim bail and he had not misused the liberty granted to him.

8. The learned counsel for the applicant Vakil Ray submitted that the applicant Vakil Ray is innocent and has been falsely implicated in the present case. He submitted that no actual recovery has been effected from the applicant and that the alleged recovery of 3.860 kg ganja has been planted. He submitted that in any event, the alleged recovery effected from the applicant Vakil Ray is only of intermediate quantity and in such circumstances, the bar under Section 37 of the NDPS Act does not apply.

9. He submitted that at the time of the alleged recovery from the applicant Vakil Ray, no independent witness was joined by the prosecution. He submitted that the alleged videography made by the prosecution is also not continuous which raises doubts regarding the recovery effected from the applicant Vakil Ray and the veracity of the case of the prosecution.

10. He submitted that it is the case of the prosecution that the applicant Rishipal called the applicant Vakil Ray during PC remand to supply the contraband, however, the same was not recorded or photographed which further raises suspicion on the recovery effected from the applicant Vakil Ray. He consequently submitted that in such circumstances, the possibility of false implication cannot be ruled out.

11. He submitted that the applicant Vakil Ray was previously granted interim bail by the learned Trial Court and he had not misused the liberty granted to him.

12. He submitted that co-accused Mukul who was apprehended along with the applicant Vakil Ray and from whose possession an alleged recovery of 5.93 kg of ganja had been effected has already been admitted on bail by the learned Trial Court vide order dated 09.06.2025. He consequently submitted that the applicant Vakil Ray be also enlarged on bail on the ground of parity.

13. Per Contra, the learned Additional Public Prosecutor vehemently opposed the grant of any relief to the applicants and submitted that the present case involves a recovery of commercial quantity of contraband, and consequently, the rigours of Section 37 of the NDPS Act are attracted against the applicants.

14. He submitted that the recovery of contraband from the applicants, though not supported by independent witnesses, have been videographed using the e-Sakshya App.

15. He submitted that as per the CDRs, the applicants Rishipal and Vakil Ray exchanged approximately 220 phone calls in the three months preceding the date of the alleged incident. He further submitted that the applicant Rishipal has multiple antecedents and consequently submitted that the present applications be dismissed.

Analysis

16. It is settled law that the Court, while considering the application for grant of bail, has to keep certain factors in mind, such as, whether there is a prima facie case or reasonable ground to believe that the accused has committed the offence; circumstances which are peculiar to the accused; likelihood of the offence being repeated; the nature and gravity of the accusation; severity of the punishment in the event of conviction; the danger of the accused absconding or fleeing if released on bail; reasonable apprehension of the witnesses being threatened; etc.

17. It is unequivocally established that, to be granted bail, the accused charged with offence under the NDPS Act must fulfil the conditions stipulated in Section 37 of the NDPS Act. Section 37 of the NDPS Act reads as under:

"37. Offences to be cognizable and non-bailable.-(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under Section 19 or Section 24 or Section 27-A and also for offences involving commercial quantity shall be released on bail or on his own bond unless-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor oppose the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974), or any other law for the time being in force, on granting of bail."

18. The accusation in the present case is with regard to the recovery of commercial quantity of contraband. Once the rigours of Section 37 of the NDPS Act are attracted, as provided under the Section, the Court can grant bail only when the twin conditions stipulated in Section 37(1)(b) of the NDPS Act are satisfied in addition to the usual requirements for the grant of bail - (1) The court must be satisfied that there are reasonable grounds for believing that the person is not guilty of such offence; and (2) That the person is not likely to commit any offence while on bail.

19. It is the case of the prosecution that on the basis of a secret information, a raid was conducted at Plot No. 155, Krishna Vihar, Najafgarh, New Delhi alleged to be the rented premise of the applicant Rishipal, and a recovery of 25.980 kg of ganja was effected. It is also the case of the prosecution that during the course of the investigation, the applicant Rishipal disclosed that the contraband was supplied to him by the applicant Vakil Ray. It is further the case of the prosecution that during PC remand, the applicant Rishipal, on the instructions of the police, contacted the applicant Vakil Ray for supply of contraband. Subsequently, a raid was conducted at Old Khaira Road, Near Petrol Pump, Najafgarh, Delhi and the applicant Vakil Ray along with his accomplice Mukul were apprehended and a recovery of 3.860 Kg and 5.930 Kg of ganja respectively was effected.

20. The learned counsel for the applicants have pressed the respective bail applications of the applicants primarily on the following grounds - failure to provide the video of the alleged search and seizure to applicant Rishipal/discrepancy in the video of the alleged search and seizure conducted which renders suspect the recoveries made from the applicants and the non-joinder of independent witnesses.

21. On the other hand, the bail applications of the applicants have been opposed on the ground that the present case involves a recovery of commercial quantity of contraband. It is further the case of the prosecution that there existed CDR connectivity between the applicants and as many as 220 calls were exchanged between the applicants in the three months preceding the date of the alleged incident.

Prima facie doubt cast on the recoveries effected from the applicants

22. Insofar as the applicant Rishipal is concerned, it is contended that the applicant's right to fair trial has been impinged as he has not received a copy of the alleged videography of search and seizure. It is pointed out that as per the prosecution, the video has been uploaded on e-Sakshya App and it can only be played in the Court by using the login ID of the concerned IO. It is further argued that the recovery is rendered doubtful as the prosecution has not been able to make out a case that the plot from where the recovery was effected had been rented by the applicant Rishipal.

Undisputedly, an applicant is ordinarily entitled to receive a copy of the evidence being used against him by the prosecution. It is unfathomable that an accused person is only allowed to view the videography of the search and seizure in the Court, when the same is undoubtedly an essential piece of evidence. The same would severely impede the accused from defending against any such evidence. Even so, in the opinion of this Court, the same alone may not ipso facto entitle the applicant to grant of bail. Be that as it may, this Court has perused the aforesaid recording uploaded on the e-Sakshya App. The video recording only shows a room in which the applicant is present, along with kattas of the recovered contraband. Prima facie, at this stage, it cannot be ascertained where the room is situated or whether the room is in the plot which was allegedly rented by the applicant Rishipal.

Moreover, even though it is the case of the prosecution that the contraband has been recovered from a plot which had been taken on rent by the applicant Rishipal, no Rent Agreement has been produced and the owner of the said plot has also not been made a witness in order to corroborate the case of the prosecution. In the opinion of this Court, the aforesaid factors prima facie cast doubt on the recovery effected from the applicant Rishipal.

23. As far as the applicant Vakil Ray is concerned, it has been emphasised that his role in the present case is not as grave as that of applicant Rishipal and only intermediate quantity of contraband was recovered from him. It is argued that the video of the alleged recovery is not continuous and no audio/video recording was done of the alleged call made by the applicant Rishipal to the said applicant during PC remand, which ultimately led to the arrest of the applicant Vakil Ray.

While the sheer lack of videography or photography may not be fatal to the case of the prosecution, in the facts of the present case, the same prima facie casts a shadow on the recovery.

Pertinently, co-accused Mukul, who was apprehended along with applicant Vakil Ray, has been granted bail on the ground that only intermediate quantity of contraband was recovered from him. The applicant Vakil Ray's bail was only rejected due to his connectivity with the applicant Rishipal. While the probative value of the material on record will be tested during the course of trial, at this stage, when this Court has found the recoveries from both the applicants to be prima facie doubtful, bail cannot be denied to the applicants on account of mere telephonic conversations.

24. Much emphasis has also been placed by the applicants on the absence of any independent witnesses apart from the infirmities and grievances in respect of the respective video recordings.

25. It is not in doubt that the case of the prosecution cannot be rejected merely on account of the case being tethered on the testimonies of official witnesses and non-examination of independent witnesses or absence of appropriate photography and videography of the recovery. The same would not be fatal to the prosecution's case. It is also not in dispute that the reliance on the testimonies of official witnesses is sufficient to secure conviction once it is established that the police witnesses have no animosity against the accused person so as to falsely implicate him. The testimonies of the official witnesses cannot be disregarded merely on account of them being police officials.

26. It can however not be denied that the lack of independent witnesses and improper/doubtful photography or videography, in some circumstances, casts a shadow over the case of the prosecution. This Court in the case of *Bantu v. State Govt of NCT of Delhi*: 2024: DHC: 5006 has observed that while the testimony of independent witness is sufficient to secure conviction if the same inspires confidence during the trial, however, lack of independent witnesses in certain cases can cast a doubt as to the credibility of the prosecution's case. It was held that when the Investigating Agency had sufficient time to

prepare before the raid was conducted, not finding the public witness and lack of photography and videography in today's time casts a doubt to the credibility of the evidence.

27. Pertinently, the recovery was effected from the applicant Rishipal on the basis of secret information and from the applicant Vakil Ray at a public place on a call made by the applicant Rishipal, when he was in PC remand. In both instances, the prosecution had ample opportunity to join independent witnesses. Despite the same, the prosecution has failed to do the same and only a mechanical explanation has been tendered by the prosecution that although efforts were made to join independent witnesses for both the recoveries, however, the persons nearby refused and left by citing reasons. While the truthfulness of the explanation rendered by the prosecution for non-joinder of independent witnesses as well as prima facie improper videography will be tested during the course of the trial, at this stage, the benefit of the same cannot be denied to the applicants.

28. Although it is argued that the rigours of Section 37 of the NDPS Act are attracted against the applicants, at this stage, having found that prima facie doubt has been cast on the respective recoveries which are further rendered suspect due to absence of independent corroboration, the benefit of bail cannot be denied to the applicants.

Pace of the trial

29. It is pertinent to note that the applicants Rishipal and Vakil Ray were arrested on 30.11.2024 and 03.12.2024 respectively. The charge sheet has been filed in the present case and the charges are yet to be framed. Additionally, the prosecution has cited 24 witnesses in the charge sheet. In such circumstances, there is no likelihood of the trial being completed in the near future.

30. The object of jail is to secure the appearance of the accused during the trial. The object is neither punitive nor preventive and the deprivation of liberty has been considered as a punishment.

Antecedents of the applicants & their conduct on interim bail

31. It is argued on behalf of the prosecution that although the applicant Vakil Ray has no other criminal involvements, the applicant Rishipal has multiple criminal antecedents apart from the present case, with some involvements being for offences under the NDPS Act, and he is thus likely to commit similar offences if enlarged on bail.

32. Undisputedly, an accused being involved in multiple cases is a relevant factor to be kept in mind while considering an application for bail. However, the same cannot be a sole basis for refusal of prayer of bail where the applicant is otherwise entitled to relief on the facts of the case, especially when he has already been enlarged on bail in the other cases.

33. Pertinently, the applicants were also admitted on interim bail and it is not the case of the prosecution that they had misused the liberty during that period. Even otherwise, appropriate conditions can be imposed to allay any apprehension that the applicants will evade trial or tamper with the evidence.

Conclusion

34. Therefore, in the opinion of this Court, the applicants have prima facie established a case for grant of bail. The applicants are directed to be released on bail on furnishing personal bonds for a sum of ₹25,000/-each with two sureties of the like amount each, subject to the satisfaction of the learned Trial Court, on the following conditions:

- a. They shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
- b. They shall under no circumstance leave the boundaries of the country without informing the concerned IO/SHO;
- c. They shall appear before the learned Trial Court as and when directed;
- d. They shall provide the address where they would be residing after their release and shall not change the address without informing the concerned IO/SHO;
- e. They shall, upon their release, give their mobile numbers to the concerned IO/SHO and shall keep their mobile phones switched on at all times.

35. In the event of there being any FIR/ DD entry/ complaint lodged against any of the applicants, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

36. It is clarified that any observations made in the present order are for the purpose of deciding the present bail applications and should not influence the outcome of the Trial and also not be taken as an expression of opinion on the merits of the case.

37. The bail applications are allowed in the aforementioned terms.

38. A copy of this order be placed in both the matters.