$~10

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

% ***Date of Decision: 17th November, 2026***

\# **CNR No. DLHC010395002026**

\+ BAIL APPLN. 3489/2026

VANSH KUMAR GAUTAM .....Petitioner

Through: Mr. Hasim Alam, Ms. Khushi A. Ayubi, Mr. Mohd. Azeem, Mr. Salahuddin Ayubi, Mr. Tarish Ayubi, Ms. Ilma Sabeel and Mr. Arshi Malik, Advs.
M: 8130208159
Email:hasimalam980@gmail.com

versus

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

Through: Mr. Amit Ahlawat, APP

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

MINI PUSHKARNA, J. *(Oral):*

1. The present application has been filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS"), seeking grant of regular bail to the petitioner, i.e., Vansh Kumar Gautam, S/o Deepak Kumar Gautam, in connection with the First Information Report ("FIR") being, *FIR No. 156/2026*, dated 09th April, 2026, under Sections 21/25/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("NDPS Act"), registered at Police Station ("PS") Alipur, Outer North District, Delhi.

Signature Not Verified
Digitally Signed
By:HARIOM SHARMA
Signing Date:18.11.2026
09:28:47

2. Subsequently, upon completion of the investigation, a Final Report/Chargesheet dated 24th May, 2026, came to be filed by the Investigating Officer ("IO"), before the Court of Additional Sessions Judge ("ASJ")/Special Judge, NDPS Act, Rohini Courts, North District, Delhi.

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

3.1 On 09th April, 2026, at about 09:20 AM, the Narcotics Cell, Police Post ("PP") Dariyapur, Bawana, Outer North District, Delhi, received a secret information that one person namely Vansh, a resident of Bijnor, Uttar Pradesh ("UP"), who permanently resides in Delhi, is involved in supplying smack/heroin in Delhi, and would come at about 11:00 AM, carrying smack in a bag on his back, near Budhpur Service Road, ahead of Khatu Shyam Mandir, near Bus stop on GT Karnal Road, from the Alipur side.

3.2 Thereafter, a raiding team was constituted by the officials of the Narcotics Cell and proceeded towards Budhpur Service Road, coming from Alipur, ahead of Khatu Shyam Mandir, near Bus Stop on GT Karnal road.

3.3 At about 11:20 AM, a person carrying a red-coloured backpack was seen coming from the direction of Budhpur drain towards the Service Road, and was identified by the secret informer. Thereafter, he was apprehended by the Police Officials at about 11:25 AM and disclosed his full name as Vansh Kumar Gautam, i.e., the petitioner herein, who was served with a notice under Section 50 of the NDPS Act, informing him of his right to be searched before a Gazetted Officer or Magistrate.

3.4 The petitioner refused and gave his written reply but nothing was recovered from his personal search. Upon checking the bag carried by the

Signature Not Verified
Digitally Signed
By:HARIOM SHARMA
Signing Date:18.11.2026
09:28:47

petitioner, the police recovered one transparent polythene packet containing a light brown powdery substance, suspected to be smack.

3.5 Thereafter, the recovered substance, along with the polythene pouch, was weighed and found to be 160 grams. The Forensic Science Laboratory ("FSL") team was called to the spot which confirmed the substance to be smack. After the search and seizure proceedings, the present FIR being, *FIR No. 156/2026* under Section 21 of the NDPS Act, was registered against the present petitioner.

3.6 Thereafter on 10th April, 2026, during the investigation, on the basis of disclosure statement of the petitioner, a person namely Majid Ali @ Tunnu, was arrested in the present matter and a recovery of 302 grams of smack was made from his residence at *Village Matloobpur, PS Laksar, District Haridwar, Uttarakhand*. The motorcycle of the petitioner was also recovered from the said village.

3.7 Thereafter, on 17th April, 2026, during the investigation and pursuant to the disclosure statement of co-accused Majid Ali @ Tunnu, a person namely, Jawwar @ Kaif S/o Jabbar, was traced and arrested. He was identified by Majid Ali @ Tunnu, as the person who used to supply smack to him. During interrogation, Jawwar @ Kaif disclosed his involvement in the supply of smack and his association with another co-accused, namely, Saddam @ Gullu, from whom he had allegedly procured smack on several occasions.

3.8 Thereafter, a raid was conducted on 17th April, 2026 at the house of another co-accused, Saddam @ Gullu S/o Salim, and was formally arrested. On his pointing out, a branded bag was taken out from a heap of bricks lying beside the wall of his house. A white-coloured bag found inside it contained

Signature Not Verified
Digitally Signed
By:HARIOM SHARMA
Signing Date:18.11.2026
09:28:47

a dark-brown powdery substance, which tested positive for smack upon being tested using the Narcotics Field Testing Kit. The weight of the white bag along with the substance was found to be 200 grams.

3.9 The samples of the contraband recovered from the petitioner were drawn on 16th April, 2026, before the Judicial Magistrate First Class ("JMFC"), Rohini Courts, Delhi, and deposited with the FSL, Rohini.

4. In support of the present bail application, the following submissions have been made on behalf of the petitioner:

4.1 The recovery made from the petitioner falls under the category of intermediate quantity as defined under the NDPS Act. Therefore, the statutory bar under Section 37 of the NDPS Act, which places restrictions on grant of bail in cases involving commercial quantity is not applicable to the facts of the present case.

4.2 The quantity recovered from the petitioner cannot be clubbed with the recoveries of the co-accused persons.

4.3 There is no minimum sentence prescribed under the NDPS Act for offences involving intermediate quantity and the punishment is left to the discretion of the Court based on the facts and circumstances of each case.

4.4 No specific grounds of arrest were communicated to the petitioner at the time of his arrest. The Arrest Memo and the Personal Search Memo bear no endorsement of such communication, and the document filed along with the Final Report/Chargesheet is an afterthought.

4.5 Petitioner is a young boy of 20 (twenty) years of age and has no previous criminal antecedents or involvement in any other criminal case.

4.6 Investigation *qua* the petitioner has already been concluded, and he has

Signature Not Verified
Digitally Signed
By:HARIOM SHARMA
Signing Date:18.11.2026
09:28:47

been sent to the Judicial Custody. There is no further requirement for custodial interrogation of the petitioner by the Investigating Agency. The petitioner undertakes to cooperate in the investigation as and when required by the Investigating Agency.

5. *Per contra*, learned Additional Public Prosecutor ("APP") for the State submits that the allegations against the petitioner are serious in nature. Thus, the bail application of the petitioner is strongly opposed. Furthermore, samples of recovered contraband were sent to FSL, Rohini for examination and a report of FSL is awaited.

6. Having heard learned counsels appearing for the parties, at the outset, this Court notes that as per the latest Nominal Roll dated 03rd October, 2026, submitted by the Office of the Superintendent of Prisons, Central Jail no. 5, Tihar, New Delhi, the petitioner has already undergone 05 (five) months and 24 (twenty-four) days of custody as on 02nd October, 2026, and the overall conduct of the petitioner is satisfactory and the same does not disclose any past involvement of the petitioner.

7. This Court also notes that recoveries of 302 grams and 200 grams of smack from the co-accused persons were made, and the recovery attributed to the petitioner is of 160 grams of heroin/smack.

8. As per the Notification bearing S.O. 1055 (E) dated 19th October, 2001, issued under Sections 2 (viia) and 2 (xxiiia) of the NDPS Act, the small quantity of heroin is 05 grams and the commercial quantity is 250 grams. Thus, the recovery from the petitioner falls within the intermediate quantity, thereby, the rigours of Section 37 of the NDPS Act are not applicable to the present case.

Signature Not Verified
Digitally Signed
By:HARIOM SHARMA
Signing Date:18.11.2026
09:28:47

9. In this regard, reference may be made to the case of ***Anita Versus State (NCT of Delhi), BAIL APPLN. 1538/2022***, decided on 20th July, 2022, wherein, this Court held that the recovery made from the petitioner in the said case was of intermediate quantity and rigours of Section 37 of the NDPS Act, are not applicable. The relevant portion of the said order reads as under:

> *"xxx xxx xx*
> *5.* ***In the present case, the recovery made from the applicant is 50 grams of Heroine from the cupboard of her house. The applicant has been in custody since 25.06.2021.***
> *xxx xxx xxx*
>
> *7.* ***Since only 50 grams of Heroine was recovered from the petitioner, the same comes within the 'intermediate' quantity and the rigours of Section 37 of the NDPS Act is not applicable to the facts of the present case.***
> *xxx xxx xxx"*
>
> (Emphasis Supplied)

10. Further, reference may also be made to the case of ***Anita @ Kallo Versus State (NCT of Delhi), 2023 SCC OnLine Del 4178,*** wherein, this Court held that the recovery made from the petitioner therein was of intermediate quantity and the recovery made from the co-accused could not be clubbed with the recovery made from the petitioner. Accordingly, the rigours of Section 37 of the NDPS Act, were held to be inapplicable. The relevant portion of the said judgment is reproduced hereinbelow:

> *"xxx xxx xxx*
> ***8. In the present case, recovery made from the petitioner is 89 grams of Heroin which amounts to intermediate quantity and not commercial quantity. In light of the judgment in Anita (supra), the recovery made from the petitioner cannot be clubbed with the recovery made from the co-accused. Therefore, in my considered view, the rigours of Section 37 of the NDPS Act would not apply in the facts and circumstances of the present case.***
> *xxx xxx xxx"*

Signature Not Verified
Digitally Signed
By:HARIOM SHARMA
Signing Date:18.11.2026
09:28:47

(Emphasis Supplied)

11. This Court further notes that the petitioner has been in custody since 09th April, 2026. The investigation is complete and Final Report/Chargesheet has been filed. Considering the facts of the present case and taking into account that the trial is likely to take some time, the petitioner cannot be kept under incarceration for an indefinite period of time.

12. A fruitful reference may also be made to the case of ***Asif Versus State (NCT of Delhi), BAIL APPLN. 432/2024***, decided on 02nd April, 2024, wherein, this Court, discussed that mere non-applicability of the rigours of the Section 37 of the NDPS Act, does not automatically entitle an accused to grant of bail, and in that case the Court has to consider the parameters to grant bail. It was further discussed that the period of incarceration is a relevant consideration, along with the nature and gravity of the accusation, the likelihood of the accused absconding, repeating the offence or influencing witnesses. It was also observed that where the trial is likely to take considerable time, continued incarceration must be assessed in light of the accused's right to speedy trial under Article 21 of the Constitution of India, 1950 ("Constitution"). The relevant portion of the said judgment is reproduced hereinbelow:

> *"xxx xxx xxx*
> *11.* ***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;***

Signature Not Verified
Digitally Signed
By:HARIOM SHARMA
Signing Date:18.11.2026
09:28:47

reasonable apprehension of the witnesses being threatened; etc. However, at the same time, period of incarceration is also a relevant factor that is to be considered.

12. ***There is no cavil that only because the bar under Section 37 of the NDPS Act is not attracted, the accused would not be entitled for bail automatically. In such circumstances, the Court has to consider the parameters as enshrined in relation to grant of bail.***

13. ***It is not denied that the contraband recovered from the applicant is Heroin weighing 11 grams which is an intermediate quantity, and the bar under Section 37 of NDPS Act is not attracted in the present case.***

xxx xxx xxx

15. ***Speedy trial in the present case does not seem a possibility. The object of jail is to secure the appearance of the accused persons during the trial. The object is neither punitive nor preventive and the deprivation of liberty has been considered as a punishment without the guilt being proved. The applicant cannot be made to spend the entire period of trial in custody especially when the trial is likely to take considerable time.***

16. ***The applicant is in custody since 06.06.2023. The applicant is stated to be a young boy aged 23 years and prolonged incarceration may itself result in the denial of his fundamental right to life and liberty guaranteed under Article 21 of the Constitution of India.***

xxx xxx xxx"

(Emphasis Supplied)

13. Furthermore, this Court has also perused the Arrest Memo, Personal Search Memo and Final Report/Chargesheet, with reference to the submissions made by learned counsel for the petitioner regarding non-compliance of the communication of grounds of arrest. The Final Report/Chargesheet records that the petitioner was apprehended at 11:25 AM on 09th April, 2026, brought to the Office of the Narcotics Cell, PP Dariyapur, Bawana, at 03:00 PM and formally arrested at 05:50 PM on the same day. It

Signature Not Verified
Digitally Signed
By:HARIOM SHARMA
Signing Date:18.11.2026
09:28:47

further records that the petitioner was produced before the Court on 10th April, 2026, and was remanded to 03 (three) days police custody.

14. Significantly, while the Final Report/Chargesheet records the co-accused, namely, Majid Ali @ Tunnu, Jawwar @ Kaif and Saddam @ Gullu, were informed of the grounds of arrest and supplied written copies thereof at the time of arrest. However, it is silent in respect of grounds of arrest to the petitioner.

15. A perusal of Serial No. 10 of the Arrest Memo reveals that it only records *'Reasons/Grounds of arrest: Recovered 160 gm Smack'*. Neither the Arrest Memo nor the Personal Search Memo contains any separate written grounds of arrest supplied to the petitioner, either at the time of arrest or at least 02 (two) hours prior to his production before the Court for remand.

16. However, the record does not disclose any exigency that prevented the IO/ Investigating Agency from furnishing the written grounds of arrest to the petitioner. Further, there is no contemporaneous material to establish that the written grounds of arrest were supplied to him at least 02 (two) hours before his production before the Court.

17. In this regard, reference may be made to the judgment in the case of ***Prabir Purkayastha Versus State (NCT of Delhi), (2024) 8 SCC 254,*** wherein, it was held that there is a clear distinction between the expressions *'reasons for arrest'* and *'grounds of arrest'*. The Court observed that while the reasons for arrest are general and formal in nature, the grounds of arrest must contain specific facts and particulars which necessitated the arrest of the particular accused. The relevant portion of the said judgment is reproduced hereinbelow:

Signature Not Verified
Digitally Signed
By:HARIOM SHARMA
Signing Date:18.11.2026
09:28:47

"xxx xxx xxx

47. We have carefully perused the arrest memo (Annexure P-7) and find that the same nowhere conveys the grounds on which the accused was being arrested. ***The arrest memo is simply a pro forma indicating the formal "reasons" for which the accused was being arrested.***

48. It may be reiterated at the cost of repetition that there is a significant difference in the phrase "reasons for arrest" and "grounds of arrest". The "reasons for arrest" as indicated in the arrest memo are purely formal parameters viz. to prevent the accused person from committing any further offence; for proper investigation of the offence; to prevent the accused person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; to prevent the arrested person for making inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to the investigating officer. These reasons would commonly apply to any person arrested on charge of a crime whereas the "grounds of arrest" would be required to contain all such details in hand of the investigating officer which necessitated the arrest of the accused. Simultaneously, the grounds of arrest informed in writing must convey to the arrested accused all basic facts on which he was being arrested so as to provide him an opportunity of defending himself against custodial remand and to seek bail. Thus, the "grounds of arrest" would invariably be personal to the accused and cannot be equated with the "reasons of arrest" which are general in nature.

xxx xxx xxx"

(Emphasis Supplied)

18. Further, reference may also be made to the case of ***Vihaan Kumar Versus State of Haryana, (2025) 5 SCC* 799,** wherein, the Supreme Court held that the grounds of arrest must be effectively communicated to the arrested person in a language understood by him, in a manner that imparts sufficient knowledge of the basic facts constituting the grounds of arrest. The Supreme Court further held that once the arrested person alleges non-

Signature Not Verified
Digitally Signed
By:HARIOM SHARMA
Signing Date:18.11.2026
09:28:47

compliance with Article 22(1) of the Constitution, the burden lies upon the IO/ Investigating Agency to establish compliance with the said constitutional mandate. The relevant portion of the said judgment is read as under:

> *"xxx xxx xxx*
>
> ***26.2. The information of the grounds of arrest must be provided to the arrested person in such a manner that sufficient knowledge of the basic facts constituting the grounds is imparted and communicated to the arrested person effectively in the language which he understands. The mode and method of communication must be such that the object of the constitutional safeguard is achieved;***
>
> ***26.3. When arrested accused alleges non-compliance with the requirements of Article 22(1), the burden will always be on the investigating officer/agency to prove compliance with the requirements of Article 22(1);***
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

19. In ***Dr. Rajinder Rajan Versus Union of India And Another, (2026) 7 SCC 524,*** the Supreme Court emphasized the mandate laid down in the case of ***Mihir Rajesh Shah Versus State of Maharashtra & Another, (2026) 1 SCC 500***, holding that furnishing written grounds of arrest is a constitutional mandate under Article 22(1) read with Article 21 of the Constitution. The Supreme Court further held that even where the grounds of arrest have been orally explained to the accused, the arresting officer is obligated to furnish the written grounds of arrest at least 02 (two) hours prior to production of the accused before the Court for remand. It was further held that any deviation from this constitutional mandate would render the arrest illegal, entitling the accused to be released forthwith. The relevant observations are reproduced hereinbelow:

Signature Not Verified
Digitally Signed
By:HARIOM SHARMA
Signing Date:18.11.2026
09:28:47

"xxx xxx xxx

18. <u>It is no longer res integra that supplying the grounds of arrest to the accused in writing before the arrest or, in a given case, under exceptional circumstances, immediately thereafter, is the mandate of the Constitutional guarantees provided under Article 22(1) read with Article 21 of the Constitution of India. The ratio of the judgment in Mihir Rajesh Shah [Mihir Rajesh Shah v. State of Maharashtra, (2026) 1 SCC 500 : (2026) 1 SCC (Cri) 1] conclusively holds that any deviation from the above principle would lead to the arrest of the accused being declared illegal entitling such accused to be released forthwith.</u>

xxx xxx xxx

20.On going through the arrest memo, we find that it has been prepared in a template format and contains a statement to the effect that the arresting officer had explained the grounds of arrest to the accused before the arrest. ***<u>Thus, the arrest memo, by itself, reflects that the grounds of arrest had been orally explained to the accused before the process of formal arrest was undertaken. Consequently, it was incumbent upon the arresting officer to have supplied the memo of grounds of arrest in writing to the accused two hours prior to producing them before the Magistrate as per the mandate of Mihir Rajesh Shah (supra) which apparently has not been followed in this case.</u>***

21.In the wake of the above discussion, ***<u>we are of the firm view that the appellants are entitled to be released from custody by giving them the benefit of the ratio laid down in Mihir Rajesh Shah (supra). Accordingly, it is hereby directed that the appellants shall be released on bail forthwith, subject to furnishing bail bonds to the satisfaction of the trial Court and such other conditions as it may deem fit to impose.</u>***

xxx xxx xxx"

(Emphasis Supplied)

20. Applying the aforesaid to the present case, this Court finds that the Investigating Agency has failed to demonstrate compliance with the constitutional mandate enshrined under Article 22(1) of the Constitution. The Arrest Memo merely records the alleged recovery as the reason/ground of arrest and does not disclose that the petitioner was furnished with the specific

Signature Not Verified
Digitally Signed
By:HARIOM SHARMA
Signing Date:18.11.2026
09:28:47

grounds of arrest in writing. Further, there is no material on record to establish that such grounds were supplied to him at least 02 (two) hours prior to his production before the Court for remand.

21. In view of the foregoing discussion, and facts and circumstances of the present case, the application is allowed and the petitioner is directed to be released on regular bail in *FIR No. 156/2026*, dated 09th April, 2026, under Sections 21/25/29 of the NDPS Act, registered at PS Alipur, Outer North District, Delhi, subject to the following terms and conditions:

21.1 The petitioner shall furnish a personal bond in the sum of Rs. 25,000/ (Rupees Twenty-Five Thousand only), with 01 (one) surety in the like amount, to the satisfaction of the Trial Court;

21.2 The petitioner shall not indulge in any criminal activity, in any manner whatsoever;

21.3 The petitioner shall give his residential address to the IO, and shall not change his residential address without prior intimation to the IO;

21.4 The petitioner shall ordinarily reside at his address as per the prison records;

21.5 The petitioner shall, upon his release, give his mobile number to the concerned Jail Superintendent and shall keep his mobile phone switched on at all times. The mobile number shall not be changed, nor shall the mobile phone be switched off, without prior intimation to the concerned Jail Superintendent;

21.6 The petitioner 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;

Signature Not Verified
Digitally Signed
By:HARIOM SHARMA
Signing Date:18.11.2026
09:28:47

21.7 The petitioner shall join the investigation as and when required by the IO;

21.8 The petitioner shall appear before the Trial Court on each and every date of hearing;

22. Needless to state that any observations made herein are purely for the purposes of deciding the present application for bail. Nothing stated herein shall be construed as an expression on the merits of the case.

23. The present application is disposed of in view of the aforesaid terms.

24. Copy of the order be sent to the concerned Jail Superintendent for information and necessary compliance.

MINI PUSHKARNA, J

NOVEMBER 17, 2026
c

Signature Not Verified
Digitally Signed
By:HARIOM SHARMA
Signing Date:18.11.2026
09:28:47