

**Court No. - 68**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 43391 of 2024

**Applicant :-** Kapil

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Ashutosh Ganguli, Masoom Alam

**Counsel for Opposite Party :-** G.A.

**Hon'ble Ashutosh Srivastava, J.**

Rejoinder affidavit filed by learned counsel for the applicant is taken on record.

Heard learned counsel for the applicant, Shri Rajesh Kumar Singh, learned A.G.A. for the State and perused the record of the case.

The present bail application under Section 439 Cr.P.C. has been filed on behalf of applicant, Kapil with a prayer to release him on bail in Case Crime No. 215 of 2024, under Section 8/20 of Narcotic Drugs and Psychotropic Substances Act, 1985, Police Station- Purkaji, District- Muzaffar Nagar.

Learned counsel for the applicant has contended that 1.5 kg of Charas alleged to be recovered from the possession of the applicant. Learned counsel for the applicant submits that police has not complied with Section 50 and 52-A of the NDPS Act. Learned counsel for the applicant submits that two samples were drawn and one was sent to Forensic Science Laboratory. The report is still awaited. According to NDPS Act, Forensic Science Laboratory has to submit chemical analysis report within 15 days, but till date no such report has been received by the Investigating Officer. Without receipt of FSL, it cannot be said that recovered contraband is Charas or something else. The applicant, who is in jail since 17.10.2024 having no criminal history to his credit, deserves to be released on bail. In case the applicant is released on bail he will not misuse the liberty of bail.

Learned AGA submits that the applicant was arrested on the spot. The applicant and other co-accused persons were very much involved in inter-state trafficking as they themselves have admitted in their voluntary statement under Section 67 of NDPS Act, which belie all statements. He has further submitted that so far as compliance of Section 50 of NDPS Act is concerned, the accused persons were searched in the presence of Shri Raju Kumar Sao, C.O. Sadar who is a gazetted officer, hence, Section 50 of NDPS Act has been fully complied with. He has further submitted that it is an admitted fact that the recovery of 1.5 kg of Charas, which is more than the commercial quantity, has been recovered from the possession of applicant. Hence, the bail application is liable to be rejected.

I have considered the rival submissions advanced by learned counsel for the parties and perused the material available on record.

It is evident that on 17.10.2024 during the checking, Charas weighing 1.5 Kg. was recovered from the possession of the applicant, which admittedly is more than the commercial quantity, as such, rigors of Section 37 of the NDPS Act are applicable in the instant case.

So far as the contention of learned counsel for the applicant that the arresting officials did not comply with the mandatory provisions of search and seizure of narcotics substance as per the provisions of the NDPS Act is concerned, the Division Bench of Hon'ble the Apex Court in ***Criminal Appeal No. 5544 of 2024 (Special Leave Petition (Crl.) No. 12120 of 2024) Narcotics Control Bureau versus Kasif***, decided on 20.12.2024 has held that sub-section (2) of Section 52A lays down the procedure as contemplated in sub-section (1) thereof, and any lapse or delayed compliance thereof would be merely a procedural irregularity which would neither entitle the accused to be released on bail nor would vitiate the trial on that ground alone. The relevant portion of the aforesaid judgment is as under:-

"39. The upshot of the above discussion may be summarized as under:

(i) The provisions of NDPS Act are required to be interpreted keeping in mind the scheme, object and purpose of the Act; as also the impact on the society as a whole. It has to be interpreted literally and not liberally, which may ultimately frustrate the object, purpose and Preamble of the Act.

(ii) While considering the application for bail, the Court must bear in mind the provisions of Section 37 of the NDPS Act which are mandatory in nature. Recording of findings as mandated in Section 37 is sine qua non is known for granting bail to the accused involved in the offences under the NDPS Act.

(iii) The purpose of insertion of Section 52A laying down the procedure for disposal of seized Narcotic Drugs and Psychotropic Substances, was to ensure the early disposal of the seized contraband drugs and substances. It was inserted in 1989 as one of the measures to implement and to give effect to the International Conventions on the Narcotic drugs and psychotropic substances.

(iv) Sub-section (2) of Section 52A lays down the procedure as contemplated in sub-section (1) thereof, and any lapse or delayed compliance thereof would be merely a procedural irregularity which would neither entitle the accused to be released on bail nor would vitiate the trial on that ground alone.

(v) Any procedural irregularity or illegality found to have been committed in conducting the search and seizure during the course of investigation or thereafter, would by itself not make the entire evidence collected during the course of investigation, inadmissible. The Court would have to consider all the circumstances and find out whether any serious prejudice has been caused to the accused.

(vi) Any lapse or delay in compliance of Section 52A by itself would neither vitiate the trial nor would entitle the accused to be released on bail. The Court will have to

consider other circumstances and the other primary evidence collected during the course of investigation, as also the statutory presumption permissible under Section 54 of the NDPS Act."

In the light of the facts and circumstances of the present case, it would be inappropriate to discuss the evidence in depth at this stage because it is likely to influence the trial of the accused. But, from the perusal of the evidences, collected during investigation so far, prima facie, the involvement of the accused in the present case cannot be ruled out. No reason is found to falsely implicate the applicant/accused. Therefore, there is no good ground to release the applicant-accused on bail at this stage. All the contentions raised by the learned counsel for the applicant pertain to the merits of the case and the same cannot be considered while considering application for grant of bail. This court is unable to form an opinion at this stage that the accused has not committed an offence.

In the ultimate conclusion, considering the facts and circumstances of the case, gravity of the offence, severity of punishment, in my opinion, no case for bail is made out. Accordingly, the bail application is hereby **rejected**.

It is clarified that the observations made regarding the bail application is limited to the decision of the bail application and any observations made herein shall not effect the trial of the case.

**Order Date :-** 15.1.2025

Ravi Prakash

(Ashutosh Srivastava, J.)