



2026:AHC-LKO:20620

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

CRIMINAL MISC. BAIL APPLICATION No. - 1587 of 2026

Shiv Balak Yadav

.....Applicant(s)

Versus

U.O.I. Thru. Narcotics Control Bureau Lko.

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Kaushal Kishore Tewari, Shakti
Counsel for Opposite Party(s)	:	Akhilesh Kumar Awasthi

Court No. - 15

HON'BLE KARUNESH SINGH PAWAR, J.

Heard learned counsel for the applicant, and Shri Akhilesh Kumar Awasthi learned counsel for the NCB.

The present application has been filed seeking bail in Crime Number 19 of 2025 under Section 8/20/29 NDPS Act, Police Station N.C.B. Mahanagar, District Lucknow.

The prosecution case, in brief, is that while the police party was on patrolling duty, they received secret information from an informer that four persons, carrying illegal contraband, were travelling in Bus No. UP 78 KT 5257 and were proceeding towards Bareilly. Acting upon the said information, the NCB officials intercepted the aforesaid bus near Sidhauri Police Station. It is alleged that from the bags carried individually by each of the accused persons, a total of 31 kilograms of ganja was recovered.

Learned counsel for the applicant submits that the alleged search and seizure is stated to have taken place in a public bus wherein a number of passengers were present; however, the statement of only the conductor has been recorded and no independent public witness has been examined. It is further submitted that there is not even a whisper in the entire recovery memo as to from which particular bag how many packets of alleged contraband were recovered. The recovery memo casually records that in the presence of the raiding team and so-called independent witnesses, all four accused persons confessed that the bags contained ganja. It is further alleged that a total of 17 packets were recovered from the said bags, having a

cumulative weight of 31 kilograms, but no specific attribution or segregation has been made with respect to each accused.

Learned counsel for the applicant submits that the alleged search and seizure is in clear violation of Section 42(1) of the NDPS Act. It is contended that the search was conducted between sunset and sunrise without obtaining any prior warrant or authorization from a competent authority, and there is no material on record to demonstrate that the mandatory requirements of recording the grounds of belief and forwarding the same to the superior officer, as contemplated under the proviso to Section 42(1), have been complied with. Such non-compliance vitiates the entire search and seizure.

It is further submitted that the alleged recovery has been shown from the joint possession of four accused persons. However, there is no specific recovery attributed to the present applicant. No contraband has been recovered from the bag allegedly belonging to the applicant, and the prosecution has failed to establish conscious possession on his part.

Learned counsel further submits that the applicant had no knowledge of any alleged narcotic substance being carried by the co-accused persons.

It is also submitted that there is non-compliance of Section 52A of the NDPS Act, which mandates proper procedure for seizure, sampling, and certification of the seized contraband before a Magistrate.

Learned counsel also submits that the applicant has explained the criminal history of one case in paragraph 29 to the bail application and he is in jail since 13.10.2025.

It is further submitted that there is no possibility of the applicant of fleeing away after being released on bail or tampering with the witnesses. In case the applicant is enlarged on bail, he shall not misuse the liberty of bail.

Learned counsel for the NCB, Shri Akhilesh Awasthi, has opposed the bail application and submitted that all the accused persons were having common intention and were in conscious possession of the contraband.

Perused the record.

A perusal of the recovery memo shows that it has been prepared in a very casual manner. The Investigating Agency could have easily mentioned how many packets of ganja were recovered from each accused and from which bag. However, this important detail has not been mentioned, which raises doubt about the recovery.

The contention of the applicant that nothing was recovered from his bag cannot be out-rightly rejected at this stage. There is no material available on record, at present, to presume abetment or criminal conspiracy between the accused persons within the meaning of Section 29 of the NDPS Act. Although the applicant was apprehended along with the co-accused persons and each of them is alleged to have been carrying bags, the recovery memo does not specify as to how much contraband was recovered from the bag of each individual accused.

The prosecution assertion that all the accused persons were acting with common intention and were in conscious possession of the contraband is yet to be established during the course of trial. At this stage, the applicant is entitled to the benefit of doubt, particularly in the absence of specific attribution of recovery.

Considering the above and the facts that the applicant has explained his criminal history of one case, involving recovery below commercial quantity of ganja, in paragraph 29 of the bail application; the applicant is in judicial custody since 13.10.2025; moreover, from the prosecution case, it is not clear whether the quantity allegedly recovered from the bag of the present applicant falls within the category of commercial quantity or otherwise, nor is the exact quantity attributed to him disclosed, thus, the twin conditions as contemplated under Section 37(1)(b) of the NDPS Act appear to be satisfied, inasmuch as there are reasonable grounds for believing that the applicant may not be guilty of the alleged offence and that he is not likely to commit any offence while on bail, in view of the law laid down by the Hon'ble Supreme Court in *Amarsingh Ramjibhai Barot vs. State of Gujarat*, reported in (2005) 7 SCC 550 and without expressing any opinion on the merits of the case, this Court finds it to be a fit case for granting bail to the applicant.

Accordingly, the bail application is allowed.

Let the applicant **Shiv Balak Yadav** involved in aforesaid case crime number be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice:-

- (i) The applicant will not tamper with the evidence during the trial.
- (ii) The applicant will not pressurize/ intimidate the prosecution witness.
- (iii) The applicant shall not directly or indirectly make any 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 any police officer or tamper with the evidence.
- (iv) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.
- (v) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.
- (vi) In case the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

March 20, 2026
Madhu J.R/P.S

(Karunesh Singh Pawar,J.)