



2026:ABC:5542

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL MISC. BAIL APPLICATION No. - 37889 of 2025

Ali Hasan

.....Applicant(s)

Versus

State of U.P.

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Pratap Kanchan Singh
Counsel for Opposite Party(s)	:	G.A.

Court No. - 68

HON'BLE ASHUTOSH SRIVASTAVA, J.

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

The present bail application under Section 483 B.N.S.S. has been filed on behalf of applicant, with a prayer to release him on bail in Case Crime No. 331 of 2025, under Sections 8/20/29 of Narcotic Drugs and Psychotropic Substances Act, 1985, Police Station Ecotech-3, District Gautam Buddh Nagar.

Learned counsel for the applicant has contended that during interception, about 1 Quintal 64 Kg 700 Gram of Ganja was recovered from the joint possession of the applicant and other co-accused. In fact no such recovery was effected from the applicant. It is further submitted that recovery was effected in densely populated area, hence, in the absence of independent public eye witness, false implication of the applicant in the present case cannot be ruled out. It is next contended that in the present case the prosecution has failed to follow strictly the provisions of Section 41, 42, 43, 50 and 52A of the N.D.P.S. Act. It is also argued that the applicant is absolutely innocent and has been falsely implicated in the present crime with a view to cause unnecessary harassment and victimize him. The applicant, who is in jail since 18.08.2025 having criminal history of two other cases 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 from the spot along with other co-accused. He has further submitted that it is an admitted fact

that the recovery of 1 Quintal 64 Kg 700 Gram of Ganja, which is more than the commercial quantity, has been recovered from the bag carried out by the applicant, hence, Section 37 of NDPS Act is attracted in the present case, therefore, 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 during search about 1 Quintal 64 Kg 700 Gram of Ganja contraband was alleged to be recovered from the possession of the joint possession of the applicant and other co-accused, which is more than commercial quantity.

This court has considered the recent case of **Union of India Vs Md. Nawaz Khan**, reported in, **AIR 2021 SC 447**, which is a case where contraband was concealed in a bag and it was held by Supreme Court that factum of absence of possession of contraband by the accused in itself cannot be sole ground for grant of bail. In paragraph nos. 20 & 29, it has been said as under:-

"20. Based on the above precedent, the test which the High Court and this Court are required to apply while granting bail is whether there are reasonable grounds to believe that the accused has not committed an offence and whether he is likely to commit any offence while on bail. Given the seriousness of offences punishable under the NDPS Act and in order to curb the menace of drug-trafficking in the country, stringent parameters for the grant of bail under the NDPS Act have been prescribed.

29. In the complaint that was filed on 16 October 2019 it is alleged that at about 1400 hours on 26 March 2019, information was received that between 1500-1700 hours on the same day, the three accused persons would be reaching Uttar Pradesh. The complaint states that the information was immediately reduced to writing. Therefore, the contention that Section 42 of the NDPS Act was not complied with is prima facie misplaced. The question is one that should be raised in the course of the trial."

The Hon'ble Apex Court further in the case of **Md. Nawaz Khan (supra)** in paragraph nos. 24 & 25 has also stated as under:

"24. As regards the finding of the High Court regarding absence of recovery of the contraband from the possession of the respondent, we note that in Union of India vs. Rattan Mallik, a two-judge Bench of this Court cancelled the bail of an accused and reversed the finding of the High Court, which had held that as the contraband (heroin) was recovered from a specially made cavity above the cabin of a truck, no contraband was found in the 'possession' of the accused. The Court observed that merely making a finding on the possession of the contraband did not fulfil the parameters of Section 37 (1)(b) and there was non- application of mind by the High Court.

25. In line with the decision of this Court in Rattan Mallik (supra), we are of the view that a finding of the absence of possession of the contraband on the person of the respondent by the High Court in the impugned order does not absolve it of the level of scrutiny required under Section 37(1)(b)(ii) of the NDPS Act."

It is further asserted by the Hon'ble Supreme Court vide para 25, referred to above, that finding of the absence of possession of the contraband on the person of the accused does not absolve him of the level of scrutiny required under Section 37 (1)(b)(ii) of the NDPS Act.

Learned counsel for the accused has not been able to point out anything to this Court so as to come to conclusion that the accused is not guilty of the offence. The fact that accused was not in physical possession of contraband would not be enough to conclude that accused is not guilty. The contention that recovery was not from conscious possession of the accused is noted to be rejected in view of recent decision of Supreme Court in **Md. Nawaz Khan's case (supra)**.

In the case of **State vs. Syed Amir Hasnain, (2002) 10 SCC 88**, the Hon'ble Apex Court has held in view of the two judgments of this Court in **Union of India Vs Ram Samujh, (1999) 9 SCC 382** and **Union of India Vs Aharwa Deen, (2000) 9 SCC 382**, even the High Court would be bound by the provisions of Section 37 of the NDPS Act and would not be entitled to release the accused under the provisions of the NDPS Act unless the provisions of Section 37 of the Act are satisfied.

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 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 Apex Court recently in the case of **Bharat Ambale versus State of Chattisgarh**, reported in **[2025 INSC 78]** while dealing with the plea that conviction stood vitiated on account of non compliance of Section 52A of

the NDPS Act in Para 50 of its judgment has held as under:-

"50. We summarize our final conclusion as under: -

(I) Although Section 52A is primarily for the disposal and destruction of seized contraband in a safe manner yet it extends beyond the immediate context of drug disposal, as it serves a broader purpose of also introducing procedural safeguards in the treatment of narcotics substance after seizure inasmuch as it provides for the preparation of inventories, taking of photographs of the seized substances and drawing samples therefrom in the presence and with the certification of a magistrate. Mere drawing of samples in presence of a gazetted officer would not constitute sufficient compliance of the mandate under Section 52A sub-section (2) of the NDPS Act.

(II) Although, there is no mandate that the drawing of samples from the seized substance must take place at the time of seizure as held in Mohanlal (supra), yet we are of the opinion that the process of inventorying, photographing and drawing samples of the seized substance shall as far as possible, take place in the presence of the accused, though the same may not be done at the very spot of seizure.

(III) Any inventory, photographs or samples of seized substance prepared in substantial compliance of the procedure prescribed under Section 52A of the NDPS Act and the Rules / Standing Order(s) thereunder would have to be mandatorily treated as primary evidence as per Section 52A sub-section (4) of the NDPS Act, irrespective of whether the substance in original is actually produced before the court or not.

(IV) The procedure prescribed by the Standing Order(s) / Rules in terms of Section 52A of the NDPS Act is only intended to guide the officers and to see that a fair procedure is adopted by the officer in-charge of the investigation, and as such what is required is substantial compliance of the procedure laid therein.

(V) Mere non-compliance of the procedure under Section 52A or the Standing Order(s) / Rules thereunder will not be fatal to the trial unless there are discrepancies in the physical evidence rendering the prosecution's case doubtful, which may not have been there had such compliance been done. Courts should take a holistic and cumulative view of the discrepancies that may exist in the evidence adduced by the prosecution and appreciate the same more carefully keeping in mind the procedural lapses.

(VI) If the other material on record adduced by the prosecution, oral or documentary inspires confidence and satisfies the court as regards the recovery as-well as conscious possession of the contraband from the accused persons, then even in such cases, the courts can without hesitation proceed to hold the accused guilty notwithstanding any procedural defect in terms of Section 52A of the NDPS Act.

(VII) Non-compliance or delayed compliance of the said provision or rules thereunder may lead the court to drawing an adverse inference against the prosecution, however no hard and fast rule can be laid down as to when such inference may be drawn, and it would all depend on the peculiar facts and circumstances of each case.

(VIII) Where there has been lapse on the part of the police in either following the procedure laid down in Section 52A of the NDPS Act or the prosecution in proving the same, it will not be appropriate for the court to resort to the statutory presumption of commission of an offence from the possession of illicit material under Section 54 of the NDPS Act, unless the court is otherwise satisfied as regards the seizure or recovery of such material from the accused persons from the other material on record.

(IX) The initial burden will lie on the accused to first lay the foundational facts to show that there was non-compliance of Section 52A, either by leading evidence of its own or by relying upon the evidence of the prosecution, and the standard required would only be preponderance of probabilities.

(X) Once the foundational facts laid indicate non-compliance of Section 52A of the NDPS Act, the onus would thereafter be on the prosecution to prove by cogent evidence that either (i) there was substantial compliance with the mandate of Section 52A of the NDPS Act OR (ii) satisfy the court that such non-compliance does not affect its case against the accused, and the standard of proof required would be beyond a reasonable doubt."

Learned counsel for the applicant has vehemently pressed the bail plea on the ground that the applicant has no criminal antecedent and he has been falsely implicated in the aforesaid crime due to ulterior motive. In the case at hand, the contraband is about 1 Quintal 64 Kg 700 Gram of Ganja from the possession of the applicant. The applicant has criminal antecedents of two other cases to his credit and there is every likelihood that the applicant shall indulge in similar crime, if enlarged on bail.

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.

January 8, 2026
pks/mahendra nath

(Ashutosh Srivastava,J.)