



2026:AHC-LKO:21494

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

CRIMINAL MISC. BAIL APPLICATION No. - 11106 of 2024

Sukhraj

.....Applicant(s)

Versus

Union Of India Thru. N.C.B. Zonal Unit Lko.

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Ayodhya Prasad Mishra A.P. Mishra, Jaylaxmi Upadhyay, Rituraj Mishra, Shesh Ram Verma, Vivek Kumar Tripathi
Counsel for Opposite Party(s)	:	Akhilesh Kumar Awasthi

Court No. - 28

HON'BLE RAJEEV BHARTI, J.

1. Heard learned counsel for the applicant as well as Shri Akhilesh Kumar Awasthi, learned counsel for the respondent Union of India.
2. The applicant seeks enlargement on bail in FIR No.23 of 2022, under Sections 8/20/25/29 of NDPS Act, Police Station N.C.B., Lucknow, District Ambedkar Nagar.
3. In terms of the FIR allegedly on the basis of a search carried out on 18.8.2022, 2 quintals and 52 kgs. of ganja was recovered.
4. In the light of the said submissions, contention of learned counsel for the applicant submits that the applicant is the driver of the confiscated vehicle. The owner of the goods as well as owner of the vehicle have already been granted bail. In the present case, chargesheet has been filed. The applicant is languishing in jail since 19.8.2022 having no criminal history. The manner and method of search and seizure proceeding all are suspicious, doubtful, unbelievable and impossible as projected by prosecution in itself as such there is non compliance of Section 42, 52, 52-A, 55 and 57 of N.D.P.S. Act.

5. Learned A.G.A. vehemently opposed the bail prayer by arguing that the search was carried out in the presence of a Gazetted Officer for which commercial quantity is prescribed as 20 kg. and considering the mandate of Section 37, the bail application should be rejected, he however does not dispute that the applicant has no criminal antecedents.

6. Learned counsel for the applicant relied on the judgment of Hon'ble Apex Court in the case of **Mohd. Muslim v. State (NCT of Delhi), 2023 SCC OnLine SC 352**, wherein the Hon'ble Apex Court has observed as under:-

"13. When provisions of law curtail the right of an accused to secure bail, and correspondingly fetter judicial discretion (like Section 37 of the NDPS Act, in the present case), this court has upheld them for conflating two competing values, i.e., the right of the accused to enjoy freedom, based on the presumption of innocence, and societal interest - as observed in Vaman Narain Ghiya v. State of Rajasthan ("the concept of bail emerges from the conflict between the police power to restrict liberty of a man who is alleged to have committed a crime, and presumption of innocence in favour of the alleged criminal...."). They are, at the same time, upheld on the condition that the trial is concluded expeditiously. The Constitution Bench in Kartar Singh v. State of Punjab made observations to this effect. In Shaheen Welfare Association v. Union of India again, this court expressed the same sentiment, namely that when stringent provisions are enacted, curtailing the provisions of bail, and restricting judicial discretion, it is on the basis that investigation and trials would be concluded swiftly....."

21.Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (ref. Satender Kumar Antil supra). Having regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail.

22. Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in

time, the injustice wrecked on the individual is immeasurable. Jails are overcrowded and their living conditions, more often than not, appalling. According to the Union Home Ministry's response to Parliament, the National Crime Records Bureau had recorded that as on 31st December 2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,069 lakhs in the country²⁰. Of these 122,852 were convicts; the rest 4,27,165 were undertrials.

23. The danger of unjust imprisonment, is that inmates are at risk of "prisonisation" a term described by the Kerala High Court in A Convict Prisoner v. State²¹ as "a radical transformation" whereby the prisoner: "loses his identity. He is known by a number. He loses personal possessions. He has no personal relationships. Psychological problems result from loss of freedom, status, possessions, dignity any autonomy of personal life. The inmate culture of prison turns out to be dreadful. The prisoner becomes hostile by ordinary standards. Selfperception changes."

24. There is a further danger of the prisoner turning to crime, "as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal"²² (also see Donald Clemmer's 'The Prison Community' published in 1940²³). Incarceration has further deleterious effects - where the accused belongs to the weakest economic strata : immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials - especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily."

8. Learned counsel for the applicant further relied on the judgment of the Hon'ble Apex Court in the case of **Man Mandal v. State of W.B., reported in 2023 SCC OnLine SC 1868** wherein the Hon'ble Apex Court granted bail to the petitioners on the ground that they had undergone almost 2 years and the trial is not likely to be concluded in near future. Hence, to grant bail in NDPS Act, the accused person has to cross the hurdle of twin

conditions mentioned in section 37 of NDPS Act. Time and again, the Hon'ble Apex Court in catena of judgments has laid down that the twin conditions can be relaxed provided the accused person has undergone substantial period of incarceration and the trial is unlikely to end in near future. In addition, the accused person has a right to speedy trial which flows from Article 21 of Constitution of India.

9. As the applicant has no criminal antecedents under the NDPS Act, the second of the twin test is also satisfied in view of the law laid down in the case of ***Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra and Anr.; (2005) 5 SCC 294***. Thus, on both the grounds and also considering the fact that the chargesheet has been filed. without entering into the merit of the case, I am of the view that the applicant is entitled to be released on bail. Accordingly, the bail application is allowed.

10. Let the applicant ***Sukhraj*** be released on bail in the aforesaid first information report number on his furnishing personal bonds and two reliable sureties of the like amount each to the satisfaction of the court concerned with the following conditions:

- (1) The applicant shall not tamper with the prosecution evidence by intimidating/ pressurizing the witnesses, or otherwise during the investigation or trial;
- (2) 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. He 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;
- (3) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C.; and
- (4) 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, the trial court shall initiate proceedings against him, in accordance with law under Section 174-A of the Indian Penal Code.

The identity, status and residential proof of sureties will be verified by the court concerned and in case of breach of any of the above conditions, the court below shall be at liberty to cancel the bail and send the applicant to prison.

11. It is clarified that the observations made in this order are strictly confined to the disposal of this bail application and must not be construed to have any reflection on the merits of the case.

March 25, 2026
Shukla

(Rajeev Bharti,J.)