



2026:AHC-LKO:22594

**HIGH COURT OF JUDICATURE AT ALLAHABAD  
LUCKNOW**

**CRIMINAL MISC. BAIL APPLICATION No. - 10984 of 2025**

Rizwan

.....Applicant(s)

Versus

State Of U.P. Thru. Prin. Secy. Home Deptt. Lko.

.....Opposite  
Party(s)

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| Counsel for Applicant(s)      | : | Shailendra Kumar |
| Counsel for Opposite Party(s) | : | G.A.             |

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**Court No. - 28**

**HON'BLE RAJEEV BHARTI, J.**

Heard learned counsel for the applicant, learned Additional Government Advocate for the State and perused the record.

The present bail application has been filed on behalf of the applicant with the prayer to release him on bail during trial in F.I.R./Case Crime No. 327 of 2022, under sections 8/20 N.D.P.S. Act, Police Station- Rupaideeha, District- Bahraich.

As per prosecution version, the contraband substance, i.e. 2 Kg of Charas is said to be recovered from the possession of the applicant.

Learned counsel for the applicant submits that the applicant is innocent and he has been falsely implicated in the present case due to ulterior motive. The alleged recovery is false and planted. Although the recovered contraband is above the commercial quantity, but there is no independent witness to the said recovery. Moreover, there is no compliance of 52-A of N.D.P.S. Act as there is no approval or certification of the court concerned.

Learned counsel for the applicant has 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 country<sup>20</sup>. 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. State*<sup>21</sup> 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."

Learned counsel for the applicant has 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.

It is further submitted that the applicant is in jail since 02.09.2022 i.e., for more than three and a half years having no previous criminal history. 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.

Per contra, learned A.G.A. opposed the prayer for bail and submitted that the recovered contraband substance is above the commercial quantity.

Upon consideration of the material available on record, submissions advanced by learned counsel for the parties and without expressing any opinion on the merits of the case, this Court is satisfied that (i) there are reasonable grounds for believing that the applicant is not guilty of the alleged offence; and (ii) the applicant is not likely to commit any offence

while on bail.

Considering the facts and circumstances of the case, prima facie the twin conditions as contained in Section 37 of the N.D.P.S. Act appear to have been satisfied and the fact that the recovered contraband is slightly above the commercial quantity; the applicant is in jail since 02.09.2022 having no previous criminal history; and without expressing any opinion on the merits of the case, I find it to be a fit case for enlarging the applicant on bail.

Accordingly, the bail application is **allowed**.

Let the applicant- **Rizwan** involved in the 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 in accordance with law.
- (vi) In case the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 84 B.N.S.S. 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 209 of B.N.S.

It is clarified that the observations made in this order are confined to the present bail application and shall have no bearing on the merits of the trial.

**(Rajeev Bharti,J.)**

**March 31, 2026**

Shravan