



2026:AHC:128735

**HIGH COURT OF JUDICATURE AT ALLAHABAD**  
**CRIMINAL MISC. BAIL APPLICATION No. - 14636 of 2026**

Santosh Kumar Behra

.....Applicant(s)

Versus

State of U.P.

.....Opposite  
Party(s)

---

Counsel for Applicant(s) : Ayush Yadav, Shailendra Kumar  
Yadav  
Counsel for Opposite Party(s) : G.A.

---

**Court No. - 69**

**HON'BLE SANTOSH RAI, J.**

1. Heard learned counsel for the applicant, learned AGA for the State-respondent and perused the record.
2. This bail application has been moved on behalf of accused-applicant Santosh Kumar Behra seeking enlargement on bail in Case Crime No.0123 of 2026, under Sections 8/20/29 N.D.P.S. Act, Police Station Sibra, District Varanasi.
3. Tersely, as per the allegation contained in the FIR two accused persons including the applicant are involved in smuggling/selling/purchasing of contraband ganja having quantum of 30.745 Kg and were present in white Bolero Pickup.
4. Learned counsel for the applicant submits that the accused-applicant has not committed any offence as alleged in the FIR and has been falsely implicated in this case. Applicant is languishing in jail since 6.4.2026. It is submitted that as per the FIR 30.745 Kg of ganja, which was kept in white Bolero Pickup, was said to be recovered from the joint possession of applicant and co-accused Rohit Sahu. It is further submitted that the mandatory provisions of Sections 42, 50, 52A, 57 of the N.D.P.S. Act has not been complied with by the competent authority. It is argued that co-accused Rohit Sahu Singh having similar role has already been enlarged on bail by this Court vide order dated 8.5.2026 passed in Criminal Misc. Bail Application No.15616 of 2026 and parity is sought in the matter. It is further argued that applicant has no criminal antecedents to his credit. Submission is

that the conclusion of trial will take sufficiently long and there is no likelihood of his fleeing from course of justice or tampering with evidence in case of release on bail. Hence, bail has been prayed for.

5. Learned AGA has vehemently opposed the submission of the accused applicant and submits that 30.745 Kg of ganja was recovered from the conscious possession of the applicant and co-accused Rohit Sahu which is above the commercial quantity. It is submitted that all the mandatory provisions of N.D.P.S. Act has been duly complied with by the authority in this case. It is argued that, in case the applicant is released on bail, he may again indulge in similar activities and misuse the liberty of bail.

6. Rule 9 and 10 of Ministry of Finance (Department of Revenue) Notification New Delhi, the 23rd December, 2022 reads as under:-

*"9. Samples to be drawn in the presence of Magistrate - After application to the Magistrate under sub-section (2) of section 52A of the Act is made, the Investigating Officer shall ensure that samples of the seized material are drawn in the presence of the Magistrate and the same is certified by the magistrate in accordance with the provisions of the said-sub-section.*

*10. Drawing the samples - (1) One sample, in duplicate, shall be drawn from each package and container seized.*

*(2) When the packages and containers seized together are of identical size and weight bearing identical marking and the contents of each package give identical results on colour test by the drugs identification kit, conclusively indicating that the packages are identical in all respects, the packages and containers may carefully be bunched in lots of not more than ten packages or containers, and for each such lot of packages and containers, one sample, in duplicate, shall be drawn:-*

*Provided that in the case of ganja, poppy straw and hashish (charas) it may be bunched in lots of not more than forty packages or containers.*

*(3) In case of drawing sample from a particular lot, it shall be ensured that representative sample in equal quantity is taken from each package or container of that lot and mixed together to make a composite whole from which the samples are drawn for that lot."*

7. Regarding bail application under N.D.P.S. Act, it is pertinent to mention Section 37 of N.D.P.S. Act, which reads as under:-

*"37. Offences to be cognizable and non-bailable.- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-*

*(a) every offence punishable under this Act shall be cognizable;*

*(b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless-*

*(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and*

*(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.*

*(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail."*

8. Thus, the conditions which courts have to be cognizant of are that there are reasonable grounds for believing that the accused is "not guilty of such offence" and that he is not likely to commit any offence while on bail, "not guilty" means that it can only be a prima facie determination.

9. In **State of Punjab Vs. Baldev Singh 1999 (6) SCC 172** the Hon'ble Supreme Court held that the compliance of Section 50 N.D.P.S. Act is mandatory.

*".....That when an empowered officer or a duly authorised officer acting on prior information is about to search a person, it is imperative for him to inform the person concerned of his right under sub-section (1) of Section 50 of being taken to the nearest gazetted officer or the nearest Magistrate for making the search....."*

*(2) That failure to inform the person concerned about the existence of his right to be searched before a gazetted officer or a Magistrate would cause prejudice to an accused."*

10. In the decisions in **Pankaj Bansal v. Union of India 2024 (7) SCC 576**, **Prabir Purkayastha v. State (NCT of Delhi) 2024(8) SCC 254** and **Vihaan Kumar v. State of Haryana AIR 2025 SC 1388**, it has been held that the requirement of informing a person of grounds for arrest is a mandatory requirement of Article 22(1) and also that the information of the grounds for arrest must be provided to the arrested person in such a manner that sufficient knowledge of the basic facts confuting the grounds imparted and communicate to the arrested person effectively in the language which he understands.

11. Having considered the submissions of the parties noted above as also the fact that though applicant is named in the FIR but only 30.745 Kg ganja was said to be recovered from joint possession of applicant and co-accused Rohit Sahu, co-accused has already been enlarged on bail, applicant has no criminal antecedents to his credit, he is languishing in jail since 6.4.2026, the nature of accusations, twin principles as laid down in Section 37 of N.D.P.S. Act, role and involvement of accused coupled with recovery, period of detention in jail, severity of the punishment, nature of supporting evidence, reasonable apprehension of tampering with the witness and prima facie case, without expressing any opinion on the merits of the case, let the applicant involved in the aforesaid crime be released on bail on his furnishing personal bond and **two heavy sureties** each in the like amount to the satisfaction of the court concerned with the following conditions that:-

(i) The applicant shall not tamper with the evidence or threaten the witnesses.

(ii) 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.

(iii) The applicant shall remain present before the trial court on each date fixed, either personally or as directed by the court concerned.

(iv) 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 of accused personally to explain circumstances appearing in the evidence against him.

(v) In case the applicant misuses the liberty of bail during trial and in order to secure his presence, the trial court shall initiate proceedings against him strictly, in accordance with law.

12. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail by the trial court.

13. Identity and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

**(Santosh Rai,J.)**

**June 23, 2026**  
RA