

SL. No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
	06.12.2023		BA1 No. 795 of 2022 <u>Hon'ble Sharad Kumar Sharma, J.</u> Mr. Prashant Khanna, Advocate, for the applicant. Mr. S.C. Dumka, AGA, for the State. The applicant is seeking his release on bail for his alleged involvement in commission of offence under Section 8/20 of the NDPS Act, which stood registered against him as a consequence of registration of the FIR, being FIR No. 34 of 2021 dated 24.12.2021. There are multiple grounds which have been taken by the applicant for seeking of his release on bail, on the ground that since the procedure for recovery and its consequential sending to the forensic science laboratory for its examination was not followed and thus there was non-compliance of the provisions contained under Section 52, 52A and 57 of the NDPS Act. Apart from that he submits that the recovery of article does not fall within the definition of cannabis as provided under Section 2(iii)(a) of the NDPS Act. Lastly, it has been argued by the learned counsel for the applicant that the applicant is languishing in jail since 24.12.2021 and he has already served about 2 years of sentence and is about 65 years of age. The bail application is being opposed by the learned Government Advocate on the ground that the recovery of the contraband made from the applicant happens to be above the commercial quantity i.e. 108 gms and hence his bail application deserves to be rejected under Section 37 of the NDPS Act. It has been further argued by the learned counsel for the Government Advocate that the

		applicant does not deserve to be released on bail for the reason being that he is carrying a criminal history and he is already facing trial in three cases pertaining to the offences under Section 60 of the Excise Act, in which he has already been convicted and a penalty has been imposed upon him. The coordinate Bench of this Court during the proceedings had directed the learned Government Advocate to reweigh the contraband and submit the report. The report has not yet been submitted, but rather it has been argued that in fact, after the sample being taken to be sent to the forensic science laboratory for its examination, was 100 gm of the contraband was taken and after examination, 92 gm was returned and if the returned contraband of 92 gm is clubbed together with the remaining weight contraband i.e. 890 gm, it doesn't justify the theory of recovery as alleged in the FIR. Apart from it, the process of recovery as mentioned in the FIR do not commensurate to the procedure prescribed under Section 15, as well as there was no independent witness to the recovery. Owing to the aforesaid, the 1st Bail Application would stand allowed. The applicant is directed to be released on bail, subject to executing his personal bond and furnishing of two sureties, each in the like amount, to the satisfaction of the Court concerned. However, for the purposes of seeking his release, the learned Court below would ensure to get the bond executed to the tune of Rs. 25,000/- from the applicant. (Sharad Kumar Sharma, J.) 06.12.2023 Mahinder/
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