



2025:AHC:175587

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL MISC. BAIL APPLICATION No. - 3145 of 2025

Khudnath Dangi

.....Applicant(s)

Versus

Narcotic Control Bureau

.....Opposite
Party(s)

Counsel for Applicant(s) : Ali Hasan, Irfanul Huda, Istiyaq Ali,
Syed Mohd. Khalid

Counsel for Opposite Party(s) : Ashish Pandey

Court No. - 87

HON'BLE SANTOSH RAI, J.

1. Heard Sri Ali Hasan, learned counsel for the applicant, Sri Vipul Pandey, learned counsel for opposite party/ N.C.B. and perused the record.

2. This bail application under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 has been moved on behalf of accused-applicant, Khudnath Dangi, seeking enlargement on bail in Case Crime No.21 of 2024, under Section 8/18/29 N.D.P.S. Act, Police Station- N.C.B. Lucknow, District Bareilly.

3. Learned counsel for the applicant argued that the accused-applicant has not committed any offence. He has been falsely implicated in this case due to ulterior motive. It is further submitted that the applicant and co-accused Vikas Dangi are said to be involved in this case and 5 kg. of contraband opium was recovered from their joint possession, but at time of arrest the applicant was present in transport Bus No.UP78JT4908. It is further submitted that mandatory provision of Section 42, 50, 52A and 57 of N.D.P.S. Act have not been complied with. The recovered contraband afim/opium was said to be kept near the seat of the accused-applicant. The bag containing the opium did not belong to the accused-applicant. The applicant is languishing in jail since 18.10.2024 having no criminal history and in case the applicant is released on bail he will again indulge in similar activities and will misuse the liberty of bail.

4. Learned counsel for the opposite party/ N.C.B. has vehemently opposed the above arguments and submitted that the applicant and co-accused Vikas Dangi were arrested on the spot and 5kg of contraband opium was recovered from their joint possession. At the time of arrest, the applicant and co-accused were present in the public transport bus and the so called opium was kept in a bag, which is near the seat of the applicant. As per FSL report, the recovered contraband is opium. Mandatory provisions of Sections 42, 52, 52-A and 57 of the N.D.P.S. Act have been duly complied in this case. The applicant has committed a very heinous offence. The recovered contraband opium is more than the commercial quantity, which is recovered from the joint possession of the applicant and co-accused Vikas Dangi. Learned counsel for the opposite party has relied upon the judgments of Hon'ble Supreme Court in case of *Narcotics Control Bureau Versus Kashif*, 2024 0 Supreme(SC) 1264, *Narcotics Control Bureau Vs. Mohit Aggarwal*, 2022 LawSuit(SC) 845 and *Union of India Through Narcotics Control Bureau, Lucknow Vs. MD Nawaz Khan*, 2021 LawSuit(SC) 546.

5. Regarding bail application under N.D.P.S. Act it is pertinent to mention Section 37 of N.D.P.S. Act. Section 37 of the N.D.P.S. Act 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."

6. 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.

7. 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."

8. 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.

9. Considering all above facts and circumstances, the nature of accusations, twin principles as laid down in Section 37 of N.D.P.S. Act, quantum of recovery, period of detention in jail, severity of the punishment in the case of conviction and nature of supporting evidence,

reasonable apprehension of tampering with the witness and prima facie case, but without commenting on merit of case, a case for bail is made out.

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

11. Let the accused-applicant, **Khudnath Dangi**, involved in above mentioned case crime number be released on bail, on his executing a personal bond and **two heavy sureties** each, in the like amount to the satisfaction of the court concerned, subject to the following conditions:

(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. 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.

(iii) The applicant shall remain present before the Trial Court on each date fixed, either personally or as directed by the Court. In case of his absence, without sufficient cause, the Trial Court may proceed against him under Section 229-A I.P.C./269 B.N.S.

(iv) In case the applicant misuse the liberty of bail during trial and in order to secure his presence, proclamation under Section 82 Cr.P.C./84 B.N.S.S. is issued and the applicants fail 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 174-A I.P.C./209. B.N.S.

(v) 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./351 B.N.S.S. If in the opinion of the Trial Court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the Trial Court to treat such default as abuse of liberty of bail and proceed against him in accordance

with law.

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

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

(Santosh Rai,J.)

September 26, 2025
Radhika