

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 5228 of 2025

Applicant :- Sumit

Opposite Party :- State of U.P.

Counsel for Applicant :- Sushil Kumar Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. List has been revised.
2. Counter affidavit filed by learned A.G.A. and rejoinder affidavit filed by learned counsel for the applicant is taken on record.
3. Heard Sri Sushil Kumar Pandey, learned counsel for the applicant, Sri Sunil Kumar, learned A.G.A. for the State and perused the material placed on record.
4. Applicant seeks bail in Case Crime No.27 of 2025, under Sections 21/22 of The Narcotic Drugs And Psychotropic Substances Act, 1985, Police Station- Goverdhan, District- Mathura, during the pendency of trial.
5. As per the allegations of the FIR, the applicant was arrested by the police and 180 grams of Alprazolam powder was recovered from him on 17.1.2025 at about 03:40 p.m.
6. Learned counsel for the applicant has argued that the applicant is absolutely innocent and has been falsely implicated in the present case with a view to cause unnecessary harassment and to victimize him. The FIR is delayed by about two hours and despite the said delay there is no compliance of mandatory provisions of Section 50 & 52-A of the N.D.P.S. Act, as such, the complete recovery is sham.
7. Learned counsel for the applicant has placed much reliance on the judgment of the Supreme Court passed in ***Bharat Aambale vs. State of Chhattishgarh, 2025 SCC OnLine SC 110***. The relevant paragraphs of the said judgment read as follows:-

"43. As aforementioned in the preceding paragraphs, the above Standing Order came to be repealed by the enactment of the NDPS Rules in 2022. However, as per Rule 29 of the aforesaid NDPS Rules, notwithstanding such repeal of the erstwhile Standing Order(s), all actions that were done on the basis of such order or guidelines shall be deemed to have been done under the corresponding provision of these Rules. Furthermore, the procedure that was delineated in Clause(s) 2.5 and 2.8 of the said Standing Order have been reincorporated as Rule 10 and 11 in the NDPS

Rules without any significant alteration.

44. The Trial Court in para 34 has clearly observed that all 73 packets that were seized were opened and the contents inside each packet were matched and an identification memo was prepared in that regard. Thereafter, two samples of 100 gm each were prepared by drawing representative samples/mixed samples and thereafter the remaining packets were sealed. The relevant observations read as under:—

"All the 73 packets were opened and the contents inside them were matched and an identification panchnama was also prepared. Two sample packets of 100 grams each were prepared from the mixed ganja, after which two sample packets of 100 grams each and the remaining ganja were filled in 6 plastic bags and sealed and seizure proceedings were carried out."

45. Thus, it appears that identification test by colour was done, thereafter the 73 packets were bunched into two lots of a maximum of 40 packets each, and representative samples were drawn which were then mixed together to prepare the two sample packets. Thus, it can be hardly be said that there has been any procedural lapse in terms of Section 52A of the NDPS Act, rather it appears that the police have strenuously followed the process prescribed thereunder that was in force at the time of seizure and sampling.

46. Even otherwise, if the contention of the appellants was to be accepted in toto such procedural lapse has absolutely no bearing on the overall case of the prosecution and by extension the conviction of the appellant inasmuch as the entire material on record clearly establishes the recovery and seizure of the ganja at the instance of the accused.

47. Before we close this judgment, we may address one another aspect as regards Section 52A of the NDPS Act. Wherever any non-compliance or contravention of either the provision or the Rules/Standing Order(s) thereunder is alleged, the same must be something tangible and not a mere bald assertion or superficial claim. The accused must impute something palpable to make good its case that there has been non-compliance of the mandate of the said provision.

48. We are conscious of the fact that this Court in Mangilal (supra) held that in a given case, the onus would be on the prosecution to satisfy the court as regards the compliance with the mandate of Section 52A of the NDPS Act. The relevant observations read as under:—

"8. Before any proposed disposal/destruction mandate of Section 52A of the NPDS Act requires to be duly complied with starting with an application to that effect. A Court should be satisfied with such compliance while deciding the case. The onus is entirely on the prosecution in a given case to satisfy the Court when such an issue arises for consideration. Production of seized material is a factor to establish seizure followed by recovery. One has to remember

that the provisions of the NDPS Act are both stringent and rigorous and therefore the burden heavily lies on the prosecution. [...]"

(Emphasis supplied)

49. However, a close reading of the aforesaid decision reveals that this onus on the prosecution will only encumber once such an issue of non-compliance arises for consideration. Although, we are in complete agreement with the aforesaid observations inasmuch as it would be for the prosecution to establish and prove compliance of Section 52A of the NDPS Act, yet at the same time, we are of the considered opinion, that mere assertion by the accused that there has been non-compliance of the said provision may not be sufficient. The initial burden will always be on the accused to lay down the foundational facts for establishing that there has been a non-compliance of Section 52A of the NDPS Act, either by leading evidence of their own or by relying upon the evidence of the prosecution itself such as by putting direct and specific questions to the police officers and key witnesses. Such burden on the accused to establish contravention of Section 52A of the NDPS Act will only be on the mere preponderance of probabilities, whereas once the foundational facts are established that raises an issue as regards the non-compliance of Section 52A of the NDPS Act, the onus will entirely be on the prosecution to prove by cogent evidence that either (i) there was substantial compliance with the mandate of Section 52A of the NDPS Act OR (ii) satisfy the court that such non-compliance does not affect its case against the accused, and the standard of proof required would be beyond a reasonable doubt.

50. We summarize our final conclusion as under:—

(I) Although Section 52A is primarily for the disposal and destruction of seized contraband in a safe manner yet it extends beyond the immediate context of drug disposal, as it serves a broader purpose of also introducing procedural safeguards in the treatment of narcotics substance after seizure inasmuch as it provides for the preparation of inventories, taking of photographs of the seized substances and drawing samples therefrom in the presence and with the certification of a magistrate. Mere drawing of samples in presence of a gazetted officer would not constitute sufficient compliance of the mandate under Section 52A sub-section (2) of the NDPS Act.

(II) Although, there is no mandate that the drawing of samples from the seized substance must take place at the time of seizure as held in Mohanlal (supra), yet we are of the opinion that the process of inventorying, photographing and drawing samples of the seized substance shall as far as possible, take place in the presence of the accused, though the same may not be done at the very spot of seizure.

(III) Any inventory, photographs or samples of seized substance prepared in substantial compliance of the

procedure prescribed under Section 52A of the NDPS Act and the Rules/Standing Order(s) thereunder would have to be mandatorily treated as primary evidence as per Section 52A subsection (4) of the NDPS Act, irrespective of whether the substance in original is actually produced before the court or not.

(IV) The procedure prescribed by the Standing Order(s)/Rules in terms of Section 52A of the NDPS Act is only intended to guide the officers and to see that a fair procedure is adopted by the officer in-charge of the investigation, and as such what is required is substantial compliance of the procedure laid therein.

(V) Mere non-compliance of the procedure under Section 52A or the Standing Order(s)/Rules thereunder will not be fatal to the trial unless there are discrepancies in the physical evidence rendering the prosecution's case doubtful, which may not have been there had such compliance been done. Courts should take a holistic and cumulative view of the discrepancies that may exist in the evidence adduced by the prosecution and appreciate the same more carefully keeping in mind the procedural lapses.

(VI) If the other material on record adduced by the prosecution, oral or documentary inspires confidence and satisfies the court as regards the recovery as-well as conscious possession of the contraband from the accused persons, then even in such cases, the courts can without hesitation proceed to hold the accused guilty notwithstanding any procedural defect in terms of Section 52A of the NDPS Act.

(VII) Non-compliance or delayed compliance of the said provision or rules thereunder may lead the court to drawing an adverse inference against the prosecution, however no hard and fast rule can be laid down as to when such inference may be drawn, and it would all depend on the peculiar facts and circumstances of each case.

(VIII) Where there has been lapse on the part of the police in either following the procedure laid down in Section 52A of the NDPS Act or the prosecution in proving the same, it will not be appropriate for the court to resort to the statutory presumption of commission of an offence from the possession of illicit material under Section 54 of the NDPS Act, unless the court is otherwise satisfied as regards the seizure or recovery of such material from the accused persons from the other material on record.

(IX) The initial burden will lie on the accused to first lay the foundational facts to show that there was non-compliance of Section 52A, either by leading evidence of its own or by

relying upon the evidence of the prosecution, and the standard required would only be preponderance of probabilities.

(X) Once the foundational facts laid indicate non-compliance of Section 52A of the NDPS Act, the onus would thereafter be on the prosecution to prove by cogent evidence that either (i) there was substantial compliance with the mandate of Section 52A of the NDPS Act OR (ii) satisfy the court that such non-compliance does not affect its case against the accused, and the standard of proof required would be beyond a reasonable doubt."

8. It is further argued that there is no criminal antecedent of the applicant. The applicant is languishing in jail since 17.1.2025 and he is ready to cooperate with trial. In case, the applicant is released on bail, he will not misuse the liberty of bail.

9. Learned A.G.A. has vehemently opposed the bail application.

10. Upon hearing learned counsel for the parties, perusal of record and considering the complicity of accused, severity of punishment as well as totality of facts and circumstances and in the light of the judgment of the Supreme Court passed in ***Bharat Aambale (supra)***, without commenting on the merits of the case, I find it a fit case for bail. The bail application is ***allowed***.

11. Let the applicant- **Sumit**, who is involved in aforementioned case 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 subject to following conditions. Further, before issuing the release order, the sureties be verified.

(i) The applicant shall not tamper with evidence during trial.

(ii) The applicant shall not pressurize/intimidate the prosecution witnesses.

(iii) The applicant shall appear before the trial court on the date fixed.

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

13. It is made clear that observations made in granting bail to the applicant shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

Order Date :- 20.5.2025/ Vikas

(Justice Krishan Pahal)