

Reserved on 19.05.2025

Delivered on 23.05.2025

Court No. - 9

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12458 of 2025

Applicant :- Pradeep Kumar Nai

Opposite Party :- State of U.P.

Counsel for Applicant :- Abhishek Tripathi, Akhilesh Kumar Mishra, Govind Singh Rajpoot

Counsel for Opposite Party :- G.A.

Hon'ble Rohit Ranjan Agarwal,J.

1. Heard learned counsel for the applicant and learned A.G.A. for the State.
2. This is the second bail application of the applicant. By means of the present bail application, the applicant seeks bail in Case Crime No. 03 of 2024, under Sections 419, 420, 467, 468, 471, 120-B IPC and 8/20 of Narcotic Drugs and Psychotropic Substances Act, 1985 (*hereinafter referred to as "NDPS Act"*), Police Station- Girwan, District- Banda, during the pendency of trial.
3. Counsel for the applicant submitted that there is no compliance of Section 52A of NDPS Act and further the co-accused Natthu Yadav has already been enlarged on bail by this Court vide order dated 10.04.2025 in Criminal Misc. Bail Application No.9893 of 2024. He further submits that he is in jail since 04.01.2024. Apart from this, no new argument was advanced by counsel for the applicant.
4. Learned A.G.A. has vehemently opposed the bail application.
5. I have heard learned counsel for the parties and perused the material on record.
6. The question with regard to fresh argument to be considered in second bail application on those very facts that were available to the accused while his earlier bail application was moved and rejected,

came for consideration before Division Bench of this Court in case of **Satya Pal vs. State of U.P., 1998 (37) ACC 287**. Division Bench relying upon the decision of Apex Court in case of **State of Maharastra vs. Buddhikota Subha Rao, AIR 1989 SC 2292** held as under:-

"4. We have heard learned counsel for the parties and have gone through the cases which were cited before the learned single Judge as also before us. We think that the point is well settled by the judgment of the Supreme Court in the case of State of Maharashtra v. Buddhikota Subha Rao, AIR 1989 SC 2292. In the aforesaid judgment of the Supreme Court while disapproving grant of bail by a learned single Judge of the High Court just after two days when a number of bail applications had been dismissed by another learned single Judge of that Court the Supreme Court also considered various other aspects relating to the question as to under what circumstances an application for bail should be considered even a previous application for bail had been rejected. It will be proper to. quote relevant passages from paragraphs 6 and 7 of the said judgment :-

6. ...The question then is whether there was justification for releasing the respondent on bail to facilitate yogic exercises under expert guidance at his residence, albeit under conditions of surveillance, even though Puranik, J. had rejected a more or less similar prayer only two days before? Should this Court refuse to exercise jurisdiction under Article 136 of the Constitution even if it is satisfied that the jurisdiction was wrongly exercised.

7. Liberty occupies a place on pride in our socio-political order. And who knew the value of liberty more than the founding fathers of our Constitution whose liberty was curtailed time and again under Draconian Laws by the colonial rulers. That is why they provided in Article 21 of the Constitution that no person shall be deprived of his personal liberty except according the procedure established by law. It follows therefore that the personal liberty of an individual can be curbed by procedure established by law. The Code of Criminal Procedure, 1973, is one such procedural law. The law permits curtailment of liberty of antisocial and anti-national elements. Article 22 casts certain obligations on the authorities in the event of arrest of an individual accused of the commission of a crime against society or the Nation. In cases of under-trial charged with the commission of an offence or offences the Court is generally called upon to decide whether to release him on bail or to commit him to jail. This decision has to be made, mainly in non-bailable cases, having regard to the nature, of the crime, the circumstances in which it was committed, the background of the, accused, the possibility of his jumping bail, the impact that his release may make on the prosecution

witnesses, its impact on society and the possibility of retribution, etc. In the present case the successive bail applications preferred by the respondent were rejected on merits having regard to the gravity of the offence alleged to have been committed. Once such application No. 36 of 1989 was rejected by Suresh, J. himself. Undeterred the respondent went on preferring successive applications for bail. All such pending bail applications were rejected by Puranik, J. by a common order on 6th June, 1989. Unfortunately Puranik, J. was not aware of the pendency of yet another bail application No. 995/ 89 otherwise he would have disposed it off by the very same common order. Before the ink was dry on Puranik J.'s order, it was upturned by the impugned order. It is not as if the Court passing the impugned order was not aware of the decision of Puranik, J. in fact there is a reference to the same in the impugned order. Could this be done in the absence of new facts and changed circumstances ? What is important to realise is that in Criminal Application No. 375 of 1989, the respondent had made an identical request as is obvious from one of the prayers (extracted earlier) made therein. Once that application was rejected there was no question of granting a similar prayer. That is virtually overruling the earlier decision without there being a change, in the fact situation. And, when we speak of change, we mean a substantial one which has a direct impact on the earlier decision and not merely cosmetic changes, which are of little or no consequence. Between the two orders there was a gap of only two days and it is nobody's case that during these two days drastic changes had taken place necessitating the release of the respondent on bail. Judicial discipline, propriety and comity demanded that the impugned order should not have been passed reversing all earlier orders including the one rendered by Puranik, J. only a couple of days before, in the absence of any substantial change in the fact-situation. In such cases it is necessary to act with restraint and circumspection so that the process of the Court is not abused by a litigant and an impression does not gain ground that the litigant has either successfully avoided one judge or selected another to secure an order, which had hitherto eluded him. In such a situation the proper course, we think, is to direct that; the matter! be placed before the same learned Judge who disposed of the earlier applications. Such a practice or convention would prevent abuse of the process of Court inasmuch as it will prevent an impression being created that a litigant is avoiding or selecting a Court to secure an order to his liking. Such a practice would also discourage the filing of successive bail applications without change of circumstances. Such a practice if adopted would be conducive to judicial discipline and would also save the Court's time as a judge familiar with the facts would be able to dispose of the subsequent application with despatch. It will also result in consistency. In this view that we take we are fortified by the observations of this Court in paragraph 5 of the judgment in *Shahzad Hasan Khan v. Ishtiaq Hasan Khan* (1987) 2 SCC 684. For the above reasons we are of the view that

there was no justification for passing the impugned order in the absence of a substantial change in the fact-situation. That is what prompted Shetty, J. to describe the impugned order as 'a bit out of the ordinary.' Judicial restraint demands that we say no more.

5. A reading of the above mentioned passage from the judgment of the Supreme court makes it clear that there is no bar in successive bail applications being moved for consideration by the Courts. However the Supreme Court clearly ob-served that the practice suggested would also discourage filing of successive bail applications without change of circumstances. This observation makes it clear that it should be only when some new facts and circumstances have developed after rejection of the previous bail application then only the second bail application should be considered on merit. The learned single Judge who referred this case to be considered by the Division Bench had made the following observations in his referring order;-

In my view this direction of the Supreme Court is intended at maintaining some degree of finality even to interim orders and not keeping it open to frequent change unless substantial changes in fact-situation are indicated. Otherwise our Courts including' superior Courts would tie flooded with frivolous repeated prayers for bail as new arguments and new twists on same facts would always be advanced by legal experts. It is therefore, necessary that a decision should be given by a higher Bench on the question if at all it would be open for a Court to allow fresh arguments on the same facts after a former prayer was although specifically the points urged in the subsequent applications were not considered.

We are in complete agreement with the views expressed by the learned single Judge and agree that a second bail application cannot be entertained on the same facts after a formal prayer was rejected although subsequently points urged in the subsequent bail applications were not considered.

*6. Learned counsel for the applicant strenuously wanted to support the view taken by the learned single Judge in the case of Gama v. State of U.P., 1986 (23) ACC 339. We are not inclined to accept the view taken by the learned single Judge in the said case. It is not uncommon but rather almost an accepted norm that the High Courts while rejecting the bail application do not give reasons for such rejection. Reasons are generally not given as observations tend to influence and affect the trial in pending cases. Therefore, the following observations of the learned single Judge in the case of **Gama v. State of U.P.(supra)** does not lay down the correct law.*

Even though it may be second or third bail application, but unless it is apparent from a reading of the first bail order that the point urged in the subsequent bail applications was also considered and rejected, it cannot be said that the point urged in the second or third bail application would

be deemed to have been considered in the first bail application just by implication.

*We accordingly overrule this view taken by the learned single Judge in **Gama's case (supra)**."*

7. In the second bail application moved by the applicant, no new ground for consideration has been taken, apart from the fact that the applicant is in jail since 04.01.2024 and one of the co-accused Natthu Yadav has been enlarged on bail by the coordinate Bench of this Court. The counsel has only placed argument on the earlier argument made when the first bail application was considered and also that no compliance of Section 52A of the Act was done by the officers while the case under the NDPS Act was registered and he was taken into custody.

8. Section 52A was inserted by the Act 2 of 1989 and came into effect from 29.05.1989. Prior to insertion of Section 52A, Central Government had issued a notification on 17.03.1986 in exercise of power under the NDPS Act and constituted Narcotics Control Bureau (NCB). The NCB had issued Standing Instructions No.1 of 88 dated 15.03.1988. The necessity to insert Section 52A arose in view of International Convention of 1988 held by United Nations.

9. After the said insertion of Section 52A, Standing Order No.1 of 1989 was followed. From time to time, Central Government had been issuing notifications in respect of disposal of narcotic drugs and psychotropic substances, controlled substances and conveyances. The matter in regard to compliance of Section 52A of the Act came up for consideration before Hon'ble Apex Court in case of **Narcotics Control Bureau vs. Kashif in Criminal Appeal No.5544 of 2024 arising out of Special Leave Petition (Crl.) No.12120 of 2024**, which was decided on 20.12.2024.

10. Hon'ble Supreme Court considering the legislative intent and the history of the NDPS Act and insertion of Section 52A held that the heading of Section 52A itself leave no room of doubt that the provision was inserted for an early disposal of the seized narcotic drugs and psychotropic substances, as one of the measures required to be taken to implement the provisions of the International Conventions on Narcotics Drugs and Psychotropic Substances. Relevant paras 20, 21, 23 and 24 of the judgment are extracted here as under :-

“20. Now, so far as Section 52A is concerned, the language employed therein itself is very clear that the said provision was inserted for an early disposal of the seized narcotic drugs and psychotropic substances, having regard to the hazardous nature, vulnerability to theft, substitution, constraints of proper storage space and other relevant considerations. Apart from the plain language used in the said section, its Heading also makes it clear that the said provision was inserted for the Disposal of the seized narcotic drugs and psychotropic substances. As per the well settled rule of interpretation, the Section Heading or Marginal note can be relied upon to clear any doubt or ambiguity in the interpretation of any provision and to discern the legislative intent. The Section Heading constitutes an important part of the Act itself, and may be read not only as explaining the provisions of the section, but it also affords a better key to the constructions of the provisions of the section which follows than might be afforded by a mere preamble. (Eastern Coalfields Limited vs. Sanjay Transport Agency and Another, (2009) 7 SCC 345)

21. The insertion of Section 52A with the Heading “Disposal of seized narcotic drugs and psychotropic substances” along with the insertion of the words “to provide for the forfeiture of property derived from or used in, illicit traffic in narcotics drugs and psychotropic substances, to implement the provisions of International Conventions on Narcotics Drugs and Psychotropic Substances”, in the long title of the NDPS Act, by Act 2 of 1989 w.e.f. 29.05.1989, leaves no room of doubt that the said provision of Section 52A was inserted for an early disposal of the seized narcotic drugs and psychotropic substances, as one of the measures required to be taken to implement the provisions of the International Conventions on Narcotics Drugs and Psychotropic Substances. The Heading of Section 52A i.e. Disposal of seized narcotic drugs and psychotropic substances delineates the object and reason of the insertion of said provision and such Heading cannot be underscored. From the bare reading of Section 52A also it is very much discernable that sub-section (1) thereof empowers the Central Government, having regard to the hazardous nature, vulnerability to theft, substitution, constraint of proper storage space or

any other relevant consideration, to specify narcotic drugs, psychotropic substances for the purpose of their disposal as soon as may be after their seizure, by such officer and in such manner as the Central Government may determine after following the procedure specified in sub-section (2).

.....

23. *As demonstrated above, sub-section (2) of Section 52A specifies the procedure as contemplated in sub-section (1) thereof, for the disposal of the seized contraband or controlled narcotic drugs and psychotropic substances. Any deviation or delay in making the application under subsection (2) by the concerned officer to the Magistrate or the delay on the part of the Magistrate in deciding such application could at the most be termed as an irregularity and not an illegality which would nullify or vitiate the entire case of the prosecution. The jurisprudence as developed by the courts so far, makes clear distinction between an “irregular proceeding” and an “illegal proceeding.” While an irregularity can be remedied, an illegality cannot be. An irregularity may be overlooked or corrected without affecting the outcome, whereas an illegality may lead to nullification of the proceedings. Any breach of procedure of rule or regulation which may indicate a lapse in procedure, may be considered as an irregularity, and would not affect the outcome of legal proceedings but it can not be termed as an illegality leading to the nullification of the proceedings. 24. Section 52A was inserted only for the purpose of early disposal of the seized contraband drugs and substances, considering the hazardous nature, vulnerability to theft, constraint of proper storage space etc. There cannot be any two opinions on the issue about the early disposal of the contraband drugs and substances, more particularly when it was inserted to implement the provisions of International Convention on the Narcotics Drugs and Psychotropic Substances, however delayed compliance or non-compliance of the said provision by the concerned 23 officer authorised to make application to the Magistrate could never be treated as an illegality which would entitle the accused to be released on bail or claim acquittal in the trial, when sufficient material is collected by the Investigating Officer to establish that the Search and Seizure of the contraband substance was made in due compliance of the mandatory provisions of the Act.”*

11. The Apex Court further considered the scope of Section 52A in light of the decision of Constitution Bench in case of **Pooran Mal vs. Director of Inspection (Investigation) New Delhi and others, (1974) 1 SCC 345** and Constitution Bench decision in case of **State of Punjab vs. Baldev Singh (1999) 6 SCC 172** as well as decision in case of **State of H.P. vs. Pirthi Chand and Another (1996) 2 SCC 37** and **State of Punjab vs. Makhan Chand (2004) 3 SCC 453** and

held that evidence collected during course of investigation in legal and proper manner and sought to be used in course of trial with regard to the seized contraband substances could not be simply brushed aside on the ground of procedural irregularity if any, committed by the concerned officer authorized in making application to the Magistrate as contemplated under Section 52A of the Act. Relevant paras 31, 32 and 33 of the judgment in case of **Kashif (supra)** are extracted here as under :-

“31. From the above decisions, the position that emerges is that this Court in catena of decisions, has approved the procedure of spot searches and seizures in compliance with the Standing Orders and the Notifications issued by the NCB and the Central Government, and upheld the convictions on being satisfied about the search and seizure made by the officers as per the provisions of the Act and being satisfied about the scientific evidence of F.S.L. reports etc. Even otherwise, in view of the law laid down by the Constitution Benches in case of Pooran Mal and in case of Baldev Singh, any procedural illegality in conducting the search and seizure by itself, would not make the entire evidence collected thereby inadmissible. The Court would have to decide the admissibility of evidence in the context and the manner in which the evidence was collected and was sought to be used during the course of trial. The evidence collected during the course of investigation in legal and proper manner and sought to be used in the course of trial with regard to the seized contraband substance could not be simply brushed aside, on the ground of procedural irregularity if any, committed by the concerned officer authorised in making application to the Magistrate as contemplated under Section 52A of the Act.

32. Significantly, the Authorised Officer can make the application under subsection (2) of Section 52A for three purposes – (a) for certifying the correctness of the inventory prepared by him; or (b) taking in presence of such magistrate, photographs of the seized drugs, substances and conveyances and certifying such photographs as true; or (c) allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate, and certifying the correctness of any list of samples so drawn. The use of the conjunction “OR” made in between the three purposes mentioned therein, itself makes it explicitly clear that the purposes for which the application could be made under sub-section (2) are alternative and not cumulative in nature. Such provision specifying multiple alternative purposes could not be construed as a mandatory provision muchless its non-compliance fatal to the case of prosecution.

33. *Though it is true that the inventory certified, photographs taken and the list of samples drawn under sub-section (2) has to be treated by the Court as primary evidence in view of sub-section (3), nonetheless the documents like Panchnama, seizure memo, arrest memo etc. prepared by the Investigating Officer on the spot or during the course of investigation are also primary evidence within the meaning of Section 62 of the Evidence Act, carrying the same evidentiary value as any other primary evidence. Such primary evidence with regard to Search and Seizure of the contraband substance could not be overlooked merely because some lapse or non-compliance is found of Section 52A of the Act.*”

12. The Apex Court further went on to hold that in the decision rendered in case of **Union of India vs. Mohanlal and Another (2016) 3 SCC 379**, the issue of pilferage of contraband was the main issue. The prime focal in case of **Mohanlal (supra)** was disposal of seized contraband goods as contemplated in Section 52A. Relevant paras 34 and 35 of the judgment in **Kashif (supra)** are extracted here as under :-

“34. *In our opinion reliance placed by the High Court on the decision of this Court in **Union of India Vs. Mohanlal and Another (2016) 3 SCC 379**, is thoroughly misplaced. In the said case, the issue of pilferage of contraband was the main issue. The Court after noticing the non-compliance of the procedure laid down in the Standing Order No. 1 of 89 dated 13.06.1989, and the possibility of the pilferage of contraband goods and their return to the market place for circulation, had appointed an amicus curiae for making a realistic review of the procedure for search, disposal or destruction of the narcotics and remedial steps that need to be taken to plug the loopholes, if any. The Court, thereafter, had raised the queries with regard to the seizure, storage, disposal/destruction and also with regard to the judicial supervision in respect of the seized narcotic drugs and psychotropic substances. The prime focal in case of Mohanlal was the disposal of seized contraband goods as contemplated in Section 52A. Though it held that the process of drawing samples has to be done in presence of and under the supervision of the Magistrate, it nowhere held that non-compliance or delayed compliance of the procedure prescribed under Section 52A (2) would vitiate the trial or would entitle the accused to be released on bail.*

35. *None of the provisions in the Act prohibits sample to be taken on the spot at the time of seizure, much less Section 52A of the said Act. On the contrary, as per the procedure laid down in the Standing Orders and Notifications issued by the NCB and the Central Government before and after the insertion of Section 52A till the Rules of 2022 were framed, the*

concerned officer was required to take samples of the seized contraband substances on the spot of recovery in duplicate in presence of the Panch witnesses and the person in whose possession the drug or substance recovered, by drawing a Panchnama. It was only with regard to the remnant substance, the procedure for disposal of the said substance was required to be followed as prescribed in Section 52A.”

13. While considering the recent judgment of Apex Court rendered in case of **Simarnjit vs. State of Punjab (Criminal Appeal No.1443/2023)**; **Yusuf @ Asif vs. State 2023 SCC Online SC 1328** and **Mohammed Khalid and Another vs. State of Telangana (2024) 5 SCC 393**; the Apex Court in **Kashif (supra)** in paras 36, 37 and 38 held as under :-

*“36. At this stage, we must deal with the recent judgments in case of **Simarnjit vs. State of Punjab, (Criminal Appeal No.1443/2023)**, in case of **Yusuf @ Asif vs. State (2023 SCC Online SC 1328)**, and in case of **Mohammed Khalid and Another vs. State of Telangana ((2024) 5 SCC 393)** in which the convictions have been set aside by this Court on finding non-compliance of Section 52A and relying upon the observations made in case of Mohanlal. Apart from the fact that the said cases have been decided on the facts of each case, none of the judgments has proposed to lay down any law either with regard to Section 52A or on the issue of admissibility of any other evidence collected during the course of trial under the NDPS Act. Therefore, we have considered the legislative history of Section 52A and other Statutory Standing Orders as also the judicial pronouncements, which clearly lead to an inevitable conclusion that delayed compliance or noncompliance of Section 52A neither vitiates the trial affecting conviction nor can be a sole ground to seek bail. In our opinion, the decisions of Constitution Benches in case of Pooran Mal and Baldev Singh must take precedence over any observations made in the judgments made by the benches of lesser strength, which are made without considering the scheme, purport and object of the Act and also without considering the binding precedents.*

37. It hardly needs to be reiterated that every law is designed to further ends of justice and not to frustrate it on mere technicalities. If the language of a Statute in its ordinary meaning and grammatical construction leads a manifest contradiction of the apparent purpose of the enactment, a construction may be put upon it which modifies the meaning of the words, or even the structure of the sentence. It is equally settled legal position that where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman’s unskillfulness or ignorance of the law. In Maxwell on Interpretation of Statutes, Tenth Edition at page 229, the following passage is found: -

“Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. ... Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used.”

*38. As observed by this Court in **K.P. Varghese vs. Income Tax Officer, Ernakulam and Another (1981) 4 SCC 173**, a statutory provision must be so construed, if it is possible, that absurdity and mischief may be avoided. Where the plain and literal interpretation of statutory provision produces a manifestly absurd and unjust result, the Court may modify the language used by the Legislature or even do some violence to it, so as to achieve the obvious intention of the Legislature and produce a rational construction and just result.”*

14. The Apex Court, in para 39 of the judgment, had laid down the guidelines in regard to consideration of bail application in cases under the NDPS Act and the purpose of Section 52A and disposal of seized narcotics drugs and psychotropic substances, which are extracted hereas under :-

“39. The upshot of the above discussion may be summarized as under:

(I) The provisions of NDPS Act are required to be interpreted keeping in mind the scheme, object and purpose of the Act; as also the impact on the society as a whole. It has to be interpreted literally and not liberally, which may ultimately frustrate the object, purpose and Preamble of the Act.

(ii) While considering the application for bail, the Court must bear in mind the provisions of Section 37 of the NDPS Act which are mandatory in nature. Recording of findings as mandated in Section 37 is sine qua non is known for granting bail to the accused involved in the offences under the NDPS Act.

(iii) The purpose of insertion of Section 52A laying down the procedure for disposal of seized Narcotic Drugs and Psychotropic Substances, was to ensure the early disposal of the seized contraband drugs and substances. It was inserted in 1989 as one of the measures to implement and to give effect to the International Conventions on the Narcotic drugs and psychotropic substances.

(iv) Sub-section (2) of Section 52A lays down the procedure as contemplated in sub-section (1) thereof, and any lapse or delayed compliance thereof would be merely a procedural irregularity which would neither entitle the accused to be released on bail nor would vitiate the trial on that ground alone.

(v) Any procedural irregularity or illegality found to have been committed in conducting the search and seizure during the course of investigation or thereafter, would by itself not make the entire evidence collected during the course of investigation, inadmissible. The Court would have to consider all the circumstances and find out whether any serious prejudice has been caused to the accused.

(vi) Any lapse or delay in compliance of Section 52A by itself would neither vitiate the trial nor would entitle the accused to be released on bail. The Court will have to consider other circumstances and the other primary evidence collected during the course of investigation, as also the statutory presumption permissible under Section 54 of the NDPS Act.”

15. The argument raised from the applicant's side stands adjudicated on the basis of guidelines summarized by the Apex Court in the recent judgment rendered in case of **Kashif (supra)**.

16. Further the judgment relied upon by the counsel for the applicant on the bail order granted by coordinate Bench of this Court to the co-accused Nattu Yadav cannot be taken into consideration by this Court as the coordinate Bench of this Court while granting bail to the co-accused has not considered the recent judgment rendered in case of **Kashif (supra)** wherein it has been held that while granting bail, satisfaction Section 37 of N.D.P.S. Act has to be recorded by the Court.

17. In view of above, the second bail application is stands rejected.

Order Date :-23.5.2025

Kushal