



2025:AHC:175638

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL MISC. BAIL APPLICATION No. - 15736 of 2025

Nilesh Alias Chhiddu

.....Applicant(s)

Versus

State of U.P.

.....Opposite
Party(s)

Counsel for Applicant(s)	: Arun Kumar Bajpai
Counsel for Opposite Party(s)	: G.A.

Court No. - 67

HON'BLE KRISHAN PAHAL, J.

1. List has been revised.
2. Heard Sri Arun Kumar Bajpai, learned counsel for the applicant and Sri Ashutosh Srivastava, learned A.G.A. for the State and perused the record.
3. Applicant seeks bail in Case Crime No. 88 of 2025, under Section 8/20 of The Narcotic Drugs And Psychotropic Substances Act, 1985, Police Station- Jaithra, District Etah, during the pendency of trial.
4. As per the allegations of the FIR, total of 80 kg and 500 gm of ganja is said to have been recovered from the joint possession of the applicant and co-accused Asharam from the truck kept in six bags in all by the police on 08.04.2025.
5. 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. He has nothing to do with the said as alleged in the FIR.
6. Learned counsel for the applicant has next stated that the allegations are per se false. There is no compliance of mandatory provision of Section 52A of the N.D.P.S. Act. Only one sample has been drawn from one bag out of the recovered six bags, as such, the said exercise is against the law as per the settled law laid down by Supreme Court in the case of ***Tofan Singh Vs. The State of Tamil Nadu*** reported in **(2021) 4 SCC 1**.
7. The applicant is languishing in jail since 09.04.2025. In case, the applicant

is released on bail, he will not misuse the liberty of bail.

8. Per contra, learned AGA has opposed the bail application of the applicant on the ground that the sample of recovered contraband has been sent for chemical analysis.

9. Learned counsel for the applicant has further argued that as per the Circular No.1/1989 issued by the Ministry of Finance, Government of India, as also the relevant law on the issue, if the large quantity of contraband is recovered by the prosecution, then the sample for the forensic analysis has to be sent from all the bags/packets concerned which were recovered. This exercise has not been undertaken by the concerned official of police, thus, it falsify the prosecution story. Learned counsel for the applicant has placed reliance on the judgment of the Supreme Court passed in the case of **Gaunter Dewin Kircher vs. State of Goa** reported in (1993) 3 SCC 145. The relevant portion of paragraph 5 of the report reads as under:-

"5. The next and most important submission of Shri Lalit Chari, the learned senior counsel appearing for the appellant is that both the courts below have erred in holding that the accused was found in possession of 12 gms. Of Charas. According to the learned counsel, only a small quantity i.e. less than 5 gms. has been sent for analysis and the evidence of P.W. 1, the Junior Scientific Officer would at the most establish that only that much of quantity which was less than 5 gms. Of Charas is alleged to have been found with the accused. The remaining part of the substance which has not been sent for analysis cannot be held to be also Charas in the absence of any expert evidence and the same could be any other material like tobacco or other intoxicating type which are not covered by the Act. Therefore the submission of the learned counsel is that the quantity proved to have been in the possession of the accused would be small quantity as provided under S. 27 of the Act and the accused should have been given the benefit of that section. Shri Wad, learned senior counsel appearing for the State submitted that the other piece of 7 gms. also was recovered from the possession of the accused and there was no need to send the entire quantity for chemical analysis and the fact that one of the pieces which was sent for analysis has been found to contain Charas the necessary inference would be that the other piece also contained Charas and that at any rate since the accused has totally denied, he cannot get the benefit of S. 27 as he has not discharged the necessary burden as required under the said Section. Before examining the scope of this provision, we shall first consider whether the prosecution has established beyond all reasonable doubt that the accused had in his possession two pieces of Charas weighing 7 gms. and 5 gms. respectively. As already mentioned only one piece was sent for chemical analysis and P.W. 1, the Junior Scientific Officer who examined the same found it to contain Charas but it was less than 5 gms. From this report alone it cannot be presumed or

inferred that the substance in the other piece weighing 7 gms. also contained Charas. It has to be borne in mind that the Act applies to certain narcotic drugs and psychotropic substances and not to all other kinds of intoxicating substances. In any event in the absence of positive proof that both the pieces recovered from the accused contained Charas only, it is not safe to hold that 12 gms. of Charas was recovered from the accused. In view of the evidence of P.W. I it must be held that the prosecution has proved positively that Charas weighing about 4.570 gms, was recovered from the accused. The failure to send the other piece has given rise to this inference. We have to observe that to obviate this difficulty, the concerned authorities would do better if they send the entire quantity seized for chemical analysis so that there may not be any dispute of this nature regarding the quantity seized. If it is not, practicable, in a given case, to send the entire quantity then sufficient quantity by way of samples from each of the packets or pieces recovered should be sent for chemical examination under a regular panchnama and as per the provisions of law."

10. Further reliance has been placed on the judgment of Delhi High Court passed in the case of **Sunil Kumar vs. State in Criminal Appeal No. 807 of 2007 dated 24.12.2010**, wherein, the High Court at Delhi while interfering in the sentence awarded by the trial Court placed reliance on the judgment passed in the case of **Gaunter Edwin Kircher (Supra)**. Relevant observations are as under:-

".....Learned counsel also cited one judgment of the Supreme Court in Gaunter Edwin Kircher vs. State of Goa, Secretariat Panaji reported in 1993) 3 SCC 145 wherein the Supreme Court had observed that if out of more than one packets of charas recovered from some person sample of the substance for being chemically tested is taken from only one packet and not from the remaining it cannot be said that the remaining packet(s) also contained charas in absence of expert evidence. The Supreme Court had rejected the submission made on behalf of the State that there was no need to send the entire quantity for chemical analysis and the fact that one of the pieces which was sent for analysis had been found to contain charas the necessary inference would be that the other piece also contain charas. The Supreme Court had also observed that:

".....the concerned authorities would do better if they send the entire quantity seized for chemical analysis so that there may not be any dispute of this nature regarding the quantity seized. If it is not, practicable, in a given case, to send the entire quantity then sufficient quantity by way of samples from each of the packets or pieces recovered should be sent for chemical examination under a regular panchnama and as per the provisions of law."

11. In support of his case, learned counsel for the applicant has also placed reliance on the judgment passed by this Court in the case of **Raju Gurang**

and Another vs. Union of India reported in **2007 (4) ADJ 17**. Paragraphs 17 and 18 of the report are as under:-

"17. In this case, the sampling has been done in a very peculiar manner. The accused persons were arrested and in all eleven packets were recovered from them. According to the recovery memo as well as the statements as have come on record, some charas was taken from all these packets and the same was mixed and five samples were prepared and one sample weighing 25 grams was sent for chemical examination. The report of the chemical examiner is paper exhibit Ka 6 and it shows that 20.1 grams charas was received by him and after testing it was found to contain T.H.C. (Tetra Hydro Cannabinol 5.6%). What is important is that one sample was prepared from the eleven packets recovered from two accused persons. The Ministry of Finance, Government of India issued standing order No. 1 of 1989 dated 13th June, 1989 for determining the manner in which the narcotic drugs and psychotropic substances, as specified in notification No. 4 of 1989 dated 29th May, 1989, published as S.O. 381(E), shall, as soon as may be, after their seizure be disposed of, having regard to their hazardous nature, vulnerability to theft, substitution and constraints of proper storage space. This standing order was issued in exercise of the powers as conferred by sub-section (1) of Section 52A of the Act. Section II of this Standing Order provides for general procedure for sampling storage etc.

18. These rules provide that in the case of seizure of a single package/container, one sample in duplicate shall be drawn. Normally, it is advisable to draw one sample (in duplicate) from each package/container in case of seizure of more than one package/container. But if the initial testing of seized packages conclusively indicates that the packages are identical in all respects they can be bunched into lot and one sample (in duplicate) can be drawn from the lot. But these rules do not provide that if there are more than one accused, their packages be bunched into one lot. The common prudence requires that the guilt of every accused has to be proved individually for the acts done by him. Even more care is required while dealing with an offender under the Act. Thus where there are more than one accused, then separate homogeneous sample should be prepared for each accused. The arresting officer should have prepared at least two homogeneous samples by taking the material from six packets recovered from accused Raju Gurang and two samples from five packets recovered from the accused Jang Bahadur Vishwakarma and two separate samples should have been sent for chemical examination to fix the liability of the two accused persons but strangely enough the arresting officer mixed the materials taken from all the eleven packets and prepared five samples and one of them was sent to the Chemical Examiner and on this basis the liability cannot be fixed on any of the accused person. Sri S. K. Singh, the learned Counsel for the Union of India could not explain this position and rather conceded that separate samples should have been prepared for the two accused persons."

12. The Supreme Court in the case of ***Union of India vs. Shiv Shankar Keshari, (2007) 7 SCC 798*** has held that the court while considering the application for bail with reference to Section 37 of the Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty.

13. Considering the facts of the case and keeping in mind, the ratio of the Supreme Court's judgment in the case of ***Union of India vs. Shiv Shankar Keshari (supra)***, larger mandate of Article 21 of the constitution of India, the nature of accusations, the nature of evidence in support thereof, the severity of punishment which conviction will entail, the character of the accused-applicant, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interest of the public/ State and other circumstances, but without expressing any opinion on the merits, I am of the view that it is a fit case for grant of bail. The bail application is **allowed**.

14. Let the applicant - **Nilesh @ Chiddu**, who is involved in aforementioned case crime 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 the evidence during trial.
- ii) The applicant shall not pressurise/intimidate with the prosecution witnesses.
- iii) The applicant shall appear before the trial court on the date fixed.

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

16. 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.

September 26, 2025
Sumit S

(Krishan Pahal,J.)