



2025:AHC:167643

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL MISC. BAIL APPLICATION No. - 22797 of 2025

Sarvesh Singh

.....Applicant(s)

Versus

Union Of India And Another

.....Opposite
Party(s)

Counsel for Applicant(s) : Ashutosh Kumar Mishra, Raj Babu Pathak
Counsel for Opposite Party(s) : Ashish Pandey, Jai Prakash Rai, A.S.G.I.

Court No. - 87

HON'BLE SANTOSH RAI, J.

1. Rejoinder affidavit filed, today in Court, on behalf of the applicant is taken on record.
2. Heard learned counsel for the applicant, learned counsel for respondent no.2 and learned AGA for the State-respondents and perused the record.
3. This bail application has been moved on behalf of accused-applicant Sarvesh Singh seeking enlargement on bail in Complaint Case No.48 of 2025, arising out of Case Crime No.01 of 2024, under Sections 8/20/25/29, 60(3) N.D.P.S. Act, 1985, Police Station N.C.B. Gorakhpur, District Sonbhadra.
4. Learned counsel for the applicant submits that the accused-applicant is innocent. He has been falsely implicated in this very case and is languishing in jail since 20.7.2024. It is submitted that the applicant is the driver of the vehicle bearing Registration No. CG04-PP-1768 from which 825 Kg of ganja is said to have been recovered from the possession of the applicant. It is further submitted that the provisions of Sections 40, 42, 50, 52 and 57 of N.D.P.S. Act have not been duly complied with by the competent authority during the course of investigation. It is argued that co-accused Shubham Tripathi has already been enlarged on bail by this Court vide order dated 4.9.2025 passed in Criminal Misc. Bail Application No.13227 of 2025. Learned counsel for the applicant has relied upon the judgment of High Court of Andhra Pradesh in the case of **Killo Subbarao and Others Vs. State of Andhra Pradesh** dated 23.6.2025 passed in

Criminal Petition No.5306 of 2025. It is further argued that the conclusion of trial will take sufficiently long and there is no likelihood of accused applicant fleeing from course of justice or tampering with evidence in case of release on bail. Hence, bail has been prayed for.

5. Learned counsel for respondent no.2 vehemently opposed the submission of learned counsel for the applicant and submits the applicant is the main accused. A huge commercial quantity of ganja i.e. 825 Kg was recovered from the possession of the accused applicant. The commercial quantity of ganja is 20 Kg. It is further submitted that as per the FSL report the recovered contraband from the possession of the applicant is ganja. It is argued that the mandatory provisions of N.D.P.S. Act has been duly complied with by the competent authority and the recovery from the possession of the accused-applicant is more than the commercial quantity. It is further argued that the role and involvement of the applicant is quite different from the co-accused Shubham Tripathi who has been granted bail by this Court. Learned counsel for respondent no.2 further relied upon the judgment of Supreme Court in the case of **Narcotics Control Bureau Vs. Kashif 2024 0 SCC 1264**.

6. 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."

7. According to the aforesaid provisions, the Court, before granting bail, has to record reason that there are reasonable ground that the applicant is not guilty of such offence and furthermore that he is not likely to commit any offence while on bail.

8. The Hon'ble Apex Court in the case of **Union of India Vs. Rattan Mallik @ Habul, (2009) 1 SCC (Cri) 831** has observed as under:-

"14. We may, however, hasten to add that while considering an application for bail with reference to Section 37 of the NDPS Act, the Court is not called upon to record a finding of 'not guilty'. At this stage, it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive finding as to whether or not the accused has committed offence under the NDPS Act. What is to be seen is whether there is reasonable ground for believing that the accused is not guilty of the offence(s) he is charged with and further that he is not likely to commit an offence under the said Act while on bail. The satisfaction of the Court about the existence of the said twin conditions is for a limited purpose and is confined to the question of releasing the accused on bail."

9. In **State (NCT of Delhi) Narcotics Control Bureau Vs. Lokesh Chadha (2021) 5 SCC 724** the Hon'ble Supreme Court held as under:-

".....Section 37 of the NDPS Act stipulates that no person accused of an offence punishable for the offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail, where the Public Prosecutor oppose the application, unless 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."

10. In a recent judgment of **Union of India through Narcotics Control Bureau, Lucknow vs. Mohd. Nawaz Khan (2021) 10 SCC 100**, Hon'ble Apex Court while cancelling the bail of accused held that the High Court should consider that in case the accused is enlarged on bail, there should be reasonable ground to believe that he will not commit an offence in future. Relevant paras of the judgment reads hereasunder:-

"23. Based on the above precedent, the test which the High Court and this Court are required to apply while granting bail is whether there are reasonable grounds to

*believe that the accused has not committed an offence and whether he is likely to commit any offence while on bail. Given the seriousness of offences punishable under the NDPS Act and in order to curb the menace of drug-trafficking in the country, stringent parameters for the grant of bail under the NDPS Act have been prescribed.
..?*

25. We shall deal with each of these circumstances in turn. The respondent has been accused of an offence under Section 8 of the NDPS Act, which is punishable under Sections 21, 27-A, 29, 60(3) of the said Act. Section 8 of the Act prohibits a person from possessing any narcotic drug or psychotropic substance. The concept of possession recurs in Sections 20 to 22, which provide for punishment for offences under the Act. In Madan Lal v. State of H.P. [Madan Lal v. State of H.P., (2003) 7 SCC 465 : 2003 SCC (Cri) 1664] this Court held that : (SCC p. 472, paras 19-23 & 26)

"19. Whether there was conscious possession has to be determined with reference to the factual backdrop. The facts which can be culled out from the evidence on record are that all the accused persons were travelling in a vehicle and as noted by the trial court they were known to each other and it has not been explained or shown as to how they travelled together from the same destination in a vehicle which was not a public vehicle.

20. Section 20(b) makes possession of contraband articles an offence. Section 20 appears in Chapter IV of the Act which relates to offences for possession of such articles. It is submitted that in order to make the possession illicit, there must be a conscious possession.

21. It is highlighted that unless the possession was coupled with the requisite mental element i.e. conscious possession and not mere custody without awareness of the nature of such possession, Section 20 is not attracted.

22. The expression "possession" is a polymorphous term which assumes different colours in different contexts. It may carry different meanings in contextually different backgrounds. It is impossible, as was observed in Supt. & Remembrancer of Legal Affairs, W.B. v. Anil Kumar Bhunja [Supt. & Remembrancer of Legal Affairs, W.B. v. Anil Kumar Bhunja, (1979) 4 SCC 274 : 1979 SCC (Cri) 1038] to work out a completely logical and precise definition of "possession" uniform[ly] applicable to all situations in the context of all statutes.

23. The word "conscious" means awareness about a particular fact. It is a state of mind which is deliberate or intended.

26. Once possession is established, the person who claims that it was not a conscious possession has to establish it, because how he came to be in possession is within his special knowledge. Section 35 of the Act gives a statutory recognition of this position because of the presumption available in law. Similar is the position in terms of Section 54 where also presumption is available to be drawn from possession of illicit articles."

26. What amounts to "conscious possession" was also considered in *Dharampal Singh v. State of Punjab* [*Dharampal Singh v. State of Punjab*, (2010) 9 SCC 608 : (2010) 3 SCC (Cri) 1431], where it was held that the knowledge of possession of contraband has to be gleaned from the facts and circumstances of a case. The standard of conscious possession would be different in case of a public transport vehicle with several persons as opposed to a private vehicle with a few persons known to one another. In *Mohan Lal v. State of Rajasthan* [*Mohan Lal v. State of Rajasthan*, (2015) 6 SCC 222 : (2015) 3 SCC (Cri) 881], this Court also observed that the term "possession" could mean physical possession with animus; custody over the prohibited substances with animus; exercise of dominion and control as a result of concealment; or personal knowledge as to the existence of the contraband and the intention based on this knowledge.

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28. As regards the finding of the High Court regarding absence of recovery of the contraband from the possession of the respondent, we note that in *Union of India v. Rattan Mallik* [*Union of India v. Rattan Mallik*, (2009) 2 SCC 624 : (2009) 1 SCC (Cri) 831], a two-Judge Bench of this Court cancelled the bail of an accused and reversed the finding of the High Court, which had held that as the contraband (heroin) was recovered from a specially made cavity above the cabin of a truck, no contraband was found in the "possession" of the accused. The Court observed that merely making a finding on the possession of the contraband did not fulfil the parameters of Section 37(1)(b) and there was non-application of mind by the High Court.

29. In line with the decision of this Court in *Rattan Mallik* [*Union of India v. Rattan Mallik*, (2009) 2 SCC 624 : (2009) 1 SCC (Cri) 831], we are of the view that a finding of the absence of possession of the contraband on the person of the respondent by the High Court in the impugned order does not absolve it of the level of scrutiny required under Section 37(1)(b)(ii) of the NDPS Act."

11. In light of the analysis of the cases, as mentioned above, and considering recovery of huge quantity of contraband coupled with the fact

that the same was recovered from the vehicle of the applicant, I do not find any reasonable ground in terms of Section 37 of the NDPS Act to release the applicant on bail.

12. Thus, taking into account the submissions made by learned counsel for the parties and the evidence on record and the complicity of the applicant in offence in question, this Court do not find any ground to release the applicant on bail.

13. The bail application stands **rejected**.

September 18, 2025
RA

(Santosh Rai,J.)