



2025:AHC:175389

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL MISC. BAIL APPLICATION No. - 28643 of 2024

Nandkishor

.....Applicant(s)

Versus

Narcotics Control Bureau

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Saurabh Pathak
Counsel for Opposite Party(s)	:	Ashish Pandey, G.A.

Court No. - 87

HON'BLE SANTOSH RAI, J.

1. Heard learned counsel for the applicant, learned A.G.A. for the State-respondents 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, Nandkishor, seeking enlargement on bail in Case Crime No. 07 of 2024 under Sections 8/20/29/60 NDPS Act at Police Station-NCB, District Varanasi during the pendency of trial.
3. Learned counsel for the applicant argued that the accused-applicant is innocent and has been falsely implicated in this case. He also submitted that name of applicant surfaced in the confessional statement of co-accused. He further submitted that mandatory provision of Sections 42, 42A, 52A of N.D.P.S. Act has not been complied with and quantity of 185.900 kg ganja was recovered from the possession of the applicant. It is next submitted that there is no independent witness of the alleged recovery of the contraband ganja. The accused applicant has no any previous history except this case. He lastly submitted that the applicant is languishing in jail since 15.02.2024 and if released on bail there is no likelihood of his fleeing from course of justice or tampering with evidence in case of release on bail.
4. Learned counsel for the N.C.B. has submitted that contraband ganja weighing 185.9 kg was recovered from the possession of the applicant in connivance with other co-accused person. He further submitted that mandatory provisions of Section 52, 52A and 57 are duly complied with and

the F.S.L. report is also available on record to show that recovery of Ganja has been affirmed in this case. He has also placed reliance upon the judgement of the Apex Court in Criminal Appeal No. 5544 of 2024 (Special Leave Petition (Crl.) no. 12120 of 2024) Narcotics Control Bureau versus Kashif decided on 20.12.2024.

5. A.G.A. has vehemently opposed the prayer for bail but could not dispute aforesaid facts.

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."

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."

7. 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.

8. 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.

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

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

- i. The applicant will not tamper with the evidence.
- ii. The applicant will not indulge in any criminal activity.
- iii. The applicant will not pressurize/intimidate the prosecution witnesses and co-operate in the trial.

iv. The applicant will appear regularly on each and every date fixed by the trial court, unless his personal appearance is exempted through counsel by the court concerned.

11. In the event of breach of any of the aforesaid conditions, the court below will be at liberty to proceed to cancel his bail.

September 26, 2025
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(Santosh Rai,J.)