



2025:AHC:174410

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL MISC. BAIL APPLICATION No. - 28439 of 2025

Shubham Maheshwari

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s)	: Rishika Raj Singhal, Sandeep Kumar Pathak, Shivendra Raj Singhal, Sr. Advocate
Counsel for Opposite Party(s)	: G.A., Krishna Agarawal

Court No. - 87

HON'BLE SANTOSH RAI, J.

1. Heard learned counsel for the applicant, learned counsel for the respondent-N.C.B. and learned A.G.A. for the State.
2. This bail application under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 has been moved on behalf of accused-applicant Shubham Maheshwari, seeking enlargement on bail in Compliant Case 07 of 2025 under Sections 8/21, 22 and 29 of N.D.P.S. Act, Police Station CBN, Delhi, District-Amroha during 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 has not committed any offence as alleged in the First Information Report. He is languishing in jail since 20.06.2025. It is submitted that the mandatory provisions of Sections 42(2), 50, 52A of the N.D.P.S. Act has not been complied with by the competent authority. It is next submitted that no independent witness was present at the time of recovery. He has no criminal antecedent and there is no likelihood of his fleeing from course of justice or tampering with evidence in case of release on bail. The learned counsel for the applicant has placed reliance upon the judgement of the ***Patna High Court in Laddu Baitha versus The State of Bihar in Criminal Appeal No. 4311 of 2018.***
4. Learned counsel for the N.C.B. vehemently opposed the submission of the accused applicant and contended that the matter is under investigation. Learned counsel for the N.C.B. has relied upon the judgment of the Apex Court in ***Union of India vs. Rattan Mallik @ Habul 2009 LawSuit (SC) 52,***

Narcotics Control Bureau Vs. Mohit Aggarwal 2022 LiveLaw (SC) 613 and further submitted that the bail application of the accused Shubham Maheshwari should be rejected on the basis of his active participation in committing the offences of N.D.P.S Act. He further submitted that the matter is under investigation. The complaint had not been filed. He next submitted that huge quantity of contraband items such as 718200 alprazolam tablets, 517300 tramadol tabulates and injection, 2428 bottles of codeine base cough syrups, 62400 tablets of lorazepam, 55248 injection of pentazocine, 120 tabs of zolpidam etc. were recovered from the possession of the applicant and there is no logical explanation in this regard. He further submitted that the mandatory provisions of Sections 42(2), 50, 52A of the N.D.P.S. Act has been complied with by the competent authority. He further submitted that applicant has committed heinous offence which is harmful for the society as a whole. He has also placed reliance upon the judgement of the Apex Court in ***Directorate of Revenue Intelligence versus Raj Kumar Arora & Ors in Criminal Appeal No. 1319 of 2013 with Criminal Appeal No. 272 of 2014*** decided on 17.04.2025.

5. Rule 9 and 10 of Ministry of Finance (Department of Revenue) Notification New Delhi, the 23rd December, 2022 reads as under :-

"9. Samples to be drawn in the presence of Magistrate - After application to the Magistrate under sub-section (2) of section 52A of the Act is made, the Investigating Officer shall ensure that samples of the seized material are drawn in the presence of the Magistrate and the same is certified by the magistrate in accordance with the provisions of the said-sub-section.

10. Drawing the samples - (1) One sample, in duplicate, shall be drawn from each package and container seized.

(2)When the packages and containers seized together are of identical size and weight bearing identical marking and the contents of each package give identical results on colour test by the drugs identification kit, conclusively indicating that the packages are identical in all respects, the packages and containers may carefully be bunched in lots of not more than ten packages or containers, and for each such lot of packages and containers, one sample, in duplicate, shall be drawn:

Provided that in the case of ganja, poppy straw and hashish (charas) it may be bunched in lots of not more than forty packages or containers.

(3) In case of drawing sample from a particular lot, it shall be ensured that representative sample in equal quantity is taken from each package or container of that lot and mixed together to make a composite whole from which the samples are drawn for that lot."

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."

8. 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.

9. 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. Considering all above facts and circumstances, the nature of accusations, twin principles as laid down in Section 37 of N.D.P.S. Act in the light of role and involvement of accused coupled with recovery, severity of the punishment, fact of huge recovery from the possession of accused, nature of supporting evidence, reasonable apprehension of tampering with the witness and prima facie case, but without commenting on merit of case, this Court finds that no case for bail is made out.

8. Accordingly, the bail application stands **rejected**.

September 25, 2025
SY

(Santosh Rai,J.)