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Court No. - 34

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 38244 of 2024

Applicant :- Azad Saifi

Opposite Party :- Central Bureau Of Narcotics P&L Cell

**Counsel for Applicant :- Rajrshi Gupta, Sunil Singh, Swarn Kumar
Yadav, Utkarsh Prasad**

Counsel for Opposite Party :- G.A., Krishna Agarawal

Hon'ble Rohit Ranjan Agarwal, J.

1. Heard Sri Dileep Kumar, learned Senior Counsel for the applicant and Sri Krishna Agarawal, learned counsel for the opposite party.

2. This is a second bail application. By means of this application, applicant Azad Saifi, who is involved in Sessions Trial No. 607 of 2024, Case Crime No. 9 of 2023, under Section 8/22/29 N.D.P.S. Act, Police Station P. & I. Cell C.B.N. New Delhi, District Gautambudha Nagar, seeks enlargement on bail during the pendency of trial.

3. The first bail application of the applicant being Criminal Misc. Bail Application No. 2359 of 2024 was rejected on 02.07.2024 and following order was passed:-

“1. Heard learned counsel for the applicant, Sri Krishna Agarwal, learned counsel for CBN and learned A.G.A. for the State.

2. By means of this application, applicant Azad Saifi, who is involved in Case Crime No. 9 of 2023, under Section 8/22/29 N.D.P.S. Act, Police Station P. & I. Cell C.B.N. New Delhi, District Gautambudha Nagar, seeks enlargement on bail during the pendency of trial.

3. It is contended by learned counsel for the applicant that the applicant has been falsely implicated in the present case by the accused Dheeraj Chaudhary has taken name of the applicant who is working in the medical store and no connection with the applicant. According to him, recovery of 111 boxes containing 15,984 capsules of Tramadol, Spasmo-proxyvon have been wrongly planted upon the applicant.

4. Learned counsel for the opposite party as well as learned A.G.A. submit that huge quantity of contraband has been recovered from the applicant's vehicle.

5. *I have heard learned counsel for the parties and perused the material on record.*

6. *This is a case where huge quantity of contraband has been recovered from the vehicle of the applicant.*

7. *Section 37 of the NDPS Act governs the field for grant of bail in offences which are cognizable and non-bailable. Section 37 is extracted here 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. *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.*

9. *Apex Court, while dealing with aforesaid provision in case of **Union of India Vs. Ram Samujh and Another, (1999) 9 SCC 429**, held as under;*

"7. It is to be borne in mind that the aforesaid legislative mandate is required to be adhered and followed. It should be borne in mind that in murder case, accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instruments in causing death or in inflicting death blow to number of innocent young victims, who are vulnerable: it causes deleterious effects and deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely. Reason may be large stake and illegal profit involved. This Court, dealing with the contention with regard to punishment under NDPS Act, has succinctly observed

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about the adverse effect of such activities in Durand Didien v. Chief Secretary, Union Territory of Goa. (1990) 1 SCC 95 as under:

"24. With deep concern, we may point out that the organised activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances have led to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportion in the recent years. Therefore, in order to effectively control and eradicate this proliferating and booming devastating menace, causing deleterious effects and deadly impact on the society as a whole, the Parliament in the wisdom has made effective provisions by introducing this Act 81 of 1985 specifying mandatory minimum imprisonment and fine,"

8. To check the menace of dangerous drugs flooding the market, the Parliament has provided that the person accused of offences under the NDPS Act should not be released on bail during trial unless mandatory conditions provided in Section 37, namely,

(i) there are reasonable grounds for believing that accused is not guilty of such offence; and

(ii) that he is not likely to commit while on bail."

10. In Union of India Vs. Shiv Shanker Kesari, (2007) 7 SCC 798, Apex Court elaborated and explained the conditions for granting of bail as provided under Section 37 of the NDPS Act. Relevant paragraph Nos. 6 and 7 are extracted here as under;

"6. As the provision itself provides no person shall be granted bail unless the two conditions are satisfied. They are; the satisfaction of the Court that there are reasonable grounds for believing that the accused is not guilty and that he is not likely to commit any offence while on bail. Both the conditions have to be satisfied. If either of these two conditions is not satisfied, the bar operates and the accused cannot be released on bail.

7. The expression used in Section 37(1)(b)(ii) is "reasonable grounds". The expression means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence charged and this reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify recording of satisfaction that the accused is not guilty of the offence charged."

11. In Union of India Vs. Rattan Mallik @ Habul, (2009) 1 SCC (Cri) 831, Apex Court 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."

12. In **State of Kerala Etc. Vs. Rajesh Etc. AIR 2020 SC 721**, Apex Court considered the scope of Section 37 and relying upon earlier decision in **Ram Samujh (supra)** held as under;

"20. The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 of the CrPC, but is also subject to the limitation placed by Section 37 which commences with non-obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second, is that the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.

21. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for."

13. The Apex Court in **Union of India vs. Prateek Shukla AIR 2021 SC 1509** held that merely recording the submissions of the parties does not amount to an indication of a judicial or, for that matter, a judicious application of mind. The provision of Section 37 of the NDPS Act provide the legal norms which have to be applied in determining whether a case for grant of bail is made out.

14. In **State (NCT of Delhi) Narcotics Control Bureau Vs. Lokesh Chadha (2021) 5 SCC 724** the 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."

15. 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 hereas under :

"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

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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.

....

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.”

16. *In the light of the analysis of the case, as mentioned above, and considering that 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.*

17. *Thus, taking into account the submission 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.*

18. *The bail application stands **rejected**.”*

4. Learned counsel for the applicant submitted that the applicant is languishing in jail since 01.12.2023 and statement of a few prosecution witnesses has been recorded by trial court. According to him, the trial is not proceeding smoothly. He contended that statement under Section 67 of Narcotic Drugs and Psychotropic Substances Act, 1985 (*hereinafter referred as “NDPS Act”*) of one Ms. Kanchan Rawat, employee of D.C. Agencies was recorded on 26.12.2023 wherein she had deposed before Central Bureau of Narcotics that she was working with the said supplier firm since 2019 and on 21.11.2023, the applicant had asked on telephone regarding availability of 112 boxes of Spasmo-proxyvon (Tramadol). On 28.11.2023, the applicant had called her and had asked to send photo of Tramadol capsules. On asking to him why the photo was needed, the applicant had informed that customer was from outside and he needed the same. She took the photograph and sent the same from the WhatsApp no. of the agency to the applicant on the mobile no. of Aarogyam Medicals. It was on 30.11.2023 that an order was sent of 120 boxes of Spasmo-proxyvon (Tramadol) upon which she booked the order and sent to the packaging unit.

5. Learned counsel for the applicant submits that the statement also revealed that she knew the owner of Aarogyam Medicals, Munish Dhiman

who was also sales head of DC Agencies from 2019 to 2021. According to him, the applicant has been falsely roped in and the actual culprit is Munish Dhiman and not the applicant. He then invited the attention of the Court to annexure no. 4 of supplementary affidavit which is the invoice issued by D.C. Agencies in name of Aarogyam Medicals for the medicines purchased on 30.11.2023 as well as acknowledgment/proof of delivery. Apart from this, no other argument was made by learned Senior Counsel.

6. Sri Krishna Agarawal, learned counsel appearing for Central Bureau of Narcotics informed that not only the co-accused, Dheeraj Chaudhary who was apprehended along with 112 boxes containing 15,984 capsules of Tramadol had taken the name of applicant but the employee of D.C. Agencies in her statement recorded under Section 67 of NDPS Act had categorically stated that it was the request of Azad Saifi, the applicant for supplying the Tramadol capsules in such a huge quantity. He further submits that earlier an inquiry was made on 21.11.2023 and again on 28.11.2023 for the supply of the same Tramadol capsules. He also invited the attention of the Court to the statement of Munish Dhiman, proprietor of M/s. Aarogyam Medicals, who has also stated that applicant was working since April, 2021 as a delivery boy. As he was suffering from cough and cold and was diagnosed with acute pharyngitis. He was advised for a bed rest for three days which was extended for five days till 30.12.2023. It was in his absence that on 30.11.2023, applicant had placed the order of Spasmo-proxyvon plus capsules to D.C. Agencies using the official phone. In the statement, Munish Dhiman had also stated that on earlier occasion in his absence, the applicant had placed order for 180 strips of Tramadol on 23.09.2023 through Invoice No. PPG-23-94373. When it came to his notice, he asked the applicant to immediately return the 180 strips of Tramadol to D.C. Agencies. The said fact can be corroborated from the sales return of D.C. Agencies dated 20.10.2023.

7. I have heard respective counsel for the parties and perused the material on record.

8. It is a case where huge amount of Spasmo-proxyvon (Tramadol) capsules has been recovered from the Alto Car belonging to father of applicant which was being driven by co-accused, Dheeraj Chaudhary. It was on the confessional statement of Dheeraj Chaudhary that the applicant was arrested. Statement under Section 67 of NDPS Act was recorded not only of owner of Aarogyam Medicals but also the sales employee of supplier firm D.C. Agencies, Ms. Kanchan Rawat. The employee of supplier firm D.C. Agencies in her statement had categorically stated that on two occasions i.e. on 21.11.2023 and 28.11.2023, the applicant -Azad Saifi had inquired about the Spasmo-proxyvon (Tramadol) capsules. Ultimately, on 30.11.2023, the applicant had placed the order for 120 boxes containing 15,984 capsules. Similarly, statement of Munish Dhiman recorded under Section 67 of NDPS Act, who is the owner of Aarogyam Medicals clearly reveals that on earlier occasion when prohibitory drug was purchased by the applicant in the name of Aarogyam Medicals from the supplier firm, D.C. Agencies, the applicant was warned and Tramadol capsules were returned which is verified from the sales return of both Aarogyam as well as D.C. Agencies dated 20.10.2023.

9. It appears from the the statement of Munish Dhiman that in his absence on 30.11.2023, the applicant had again ordered Tramadol capsules in huge quantity which was recovered from the possession of Dheeraj Chaudhary.

10. The arguments made during the second bail application were all available when the first bail application was rejected. No new circumstances have been brought before the Court for enlarging the applicant on bail.

11. 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 Maharashtra 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 of 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 observed 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).**"*

12. 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 01.12.2023. The counsel has only placed reliance on the earlier argument made when the first bail application was considered.

13. No new ground has been raised in the second bail application and Division Bench had already in case of **Satya Pal (supra)** had taken view that unless and until new ground exist, the second bail application cannot be considered.

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

Order Date :- 22.8.2025

V.S.Singh