

Banke vs State Of U.P. And Another on 1 May, 2025

Author: Ashutosh Srivastava

Bench: Ashutosh Srivastava

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:87387

Court No. - 68

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 9230 of 2025

Applicant :- Banke

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Mayank Bhushan Nath Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Ashutosh Srivastava,J.

1. Heard Sri Mayank Bhushan Nath Tripathi, learned counsel for the applicant, Shri Shashank Singh, Advocate, holding brief of learned A.G.A. for the State and perused the record of the case.
2. The present bail application under Section 483 BNSS has been filed on behalf of applicant, Banke, with a prayer to release him on bail in Case Crime No. 502 of 2024, under Section 8/20 of Narcotic Drugs and Psychotropic Substances Act, 1985, Police Station- Akbarpur, District- Kanpur Nagar.
3. Learned counsel for the applicant has contended that as per prosecution version 4 Kg. of Charas is alleged to have been recovered from the possession of the applicant. As per prosecution story, the alleged incident took place on 26.10.2024 while Sub Inspector Sri Dev Narayan Dwivedi of police station Akbarpur, District Kanpur Nagar was on duty, he received an information from the informer

that one person is coming from Durwasha Ashram on Motorcycle with Charas. After receiving the alleged information, S.I. Braj Kishor along with S.I. Abhishek Singh Chauhan and constable Sarvendra Singh raided at village Banspurwa corssing Etawah near Kanpur Highway. After some time, the applicant came by motorcycle and the police personnel stopped the motorcycle and caught the applicant, and during search, the applicant stated that he is having 4 kg. of charas in his bag and when the bag of the applicant was opened in which 8 packets of Charas wrapped with yellow polythene and also Rs. 210/- and one mobile were recovered from the possession of the applicant. In fact no such recovery was effected from the applicant. It is further submitted that since such recovery is not supported by independent witness, possibility of his false implication in the crime cannot be ruled out. It is next contended that in the present case the prosecution has failed to follow strictly the provisions as contained in the N.D.P.S. Act. It is also argued that the applicant is absolutely innocent and has been falsely implicated in the present crime with a view to cause unnecessary harassment and victimize him. The applicant, who is in jail since 26.10.2024 having no criminal history to his credit, deserves to be released on bail. In case the applicant is released on bail he will not misuse the liberty of bail.

4. Per contra learned A.G.A. has opposed the bail prayer of the applicant by contending that the innocence of the applicant cannot be adjudged at pre trial stage who is involved in supplying contraband, therefore, the applicant does not deserve any indulgence. In case the applicant is released on bail he will again indulge in similar activity.

5. I have considered the rival submissions advanced by learned counsel for the parties and perused the material available on record.

6. It is evident that during search contraband was alleged to be recovered from the conscious possession of the applicant, which is more than commercial quantity.

7. So far as the contention of learned counsel for the applicant that the arresting officials did not comply with the mandatory provisions of search and seizure of narcotics substance as per the provisions of the NDPS Act is concerned, the Division Bench of Hon'ble the Apex Court in Criminal Appeal No. 5544 of 2024 (Special Leave Petition (Crl.) No. 12120 of 2024) Narcotics Control Bureau versus Kasif, decided on 20.12.2024 has held that sub-section (2) of Section 52A lays down the procedure as contemplated in sub-section (1) thereof, and any lapse or delayed compliance thereof would be merely a procedural irregularity which would neither entitle the accused to be released on bail nor would vitiate the trial on that ground alone. The relevant portion of the aforesaid judgment is as under:-

"39. The upshot of the above discussion may be summarized as under:

(i) The provisions of NDPS Act are required to be interpreted keeping in mind the scheme, object and purpose of the Act; as also the impact on the society as a whole. It has to be interpreted literally and not liberally, which may ultimately frustrate the object, purpose and Preamble of the Act.

(ii) While considering the application for bail, the Court must bear in mind the provisions of Section 37 of the NDPS Act which are mandatory in nature. Recording of findings as mandated in Section 37 is sine qua non is known for granting bail to the accused involved in the offences under the NDPS Act.

(iii) The purpose of insertion of Section 52A laying down the procedure for disposal of seized Narcotic Drugs and Psychotropic Substances, was to ensure the early disposal of the seized contraband drugs and substances. It was inserted in 1989 as one of the measures to implement and to give effect to the International Conventions on the Narcotic drugs and psychotropic substances.

(iv) Sub-section (2) of Section 52A lays down the procedure as contemplated in sub-section (1) thereof, and any lapse or delayed compliance thereof would be merely a procedural irregularity which would neither entitle the accused to be released on bail nor would vitiate the trial on that ground alone.

(v) Any procedural irregularity or illegality found to have been committed in conducting the search and seizure during the course of investigation or thereafter, would by itself not make the entire evidence collected during the course of investigation, inadmissible. The Court would have to consider all the circumstances and find out whether any serious prejudice has been caused to the accused.

(vi) Any lapse or delay in compliance of Section 52A by itself would neither vitiate the trial nor would entitle the accused to be released on bail. The Court will have to consider other circumstances and the other primary evidence collected during the course of investigation, as also the statutory presumption permissible under Section 54 of the NDPS Act."

8. In the light of the facts and circumstances of the present case, it would be inappropriate to discuss the evidence in depth at this stage because it is likely to influence the trial of the accused. But, from the perusal of the evidences, collected during investigation so far, prima facie, the involvement of the accused in the present case cannot be ruled out. No reason is found to falsely implicate the applicant/accused. Therefore, there is no good ground to release the applicant-accused on bail at this stage. All the contentions raised by the learned counsel for the applicant pertain to the merits of the case and the same cannot be considered while considering application for grant of bail. This court is unable to form an opinion at this stage that the accused has not committed an offence.

9. In the ultimate conclusion, considering the facts and circumstances of the case, gravity of the offence, severity of punishment, in my opinion, no case for bail is made out. Accordingly, the bail application is hereby rejected.

10. It is clarified that the observations made regarding the bail application is limited to the decision of the bail application and any observations made herein shall not effect the trial of the case.

Order Date :- 1.5.2025 v.k.updh.