

Shah Mohammad @ Shanu vs State Of U.P. on 1 April, 2025

Author: Siddharth

Bench: Siddharth

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:45021

Court No. - 47

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 16776 of 2024

Applicant :- Shah Mohammad @ Shanu

Opposite Party :- State of U.P.

Counsel for Applicant :- Ziya Uddin

Counsel for Opposite Party :- G.A.

Hon'ble Siddharth,J.

Heard learned counsel for applicant, learned A.G.A. for the State and perused the record.

This bail application has been preferred by the accused-applicant, Shah Mohammad @ Shanu, who is involved in Case Crime No. 78 of 2024, under Section 8/20/29/37/60 of N.D.P.S. Act, Police Station- Kotwali Shamli, District- Shamli.

There are allegations that 181.530 kg ganja has been recovered from the joint possession of two persons in stationary truck.

Learned counsel for the applicant has submitted that by way of Notification dated 23 December, 2022, the Union Government has notified the enactment Narcotic Drugs and Psychotropic

Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022. Chapter II of the aforesaid rules provide for Sampling of the contraband substance. Rule 10 categorically provides that:

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 fourty 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.

The mixing of the materials from all the packets without the use of field-testing kit has been prohibited since, if such a course is adopted, the sample would seize to be a representative sample of the corresponding bundle. In the present case, 42 packets recovered but samples were not drawn in duplicate from all the packets. Moreover, the inventory was neither prepared in the presence of a Magistrate nor has it been certified by him as mandated by the Hon'ble Apex Court in the case of Yusuf @ Asif Vs. State (AIR 2023 SC 5041). The applicant has no criminal history. He is in jail since 06.02.2024 and he undertakes that he will not misuse liberty, if granted.

Learned A.G.A. has opposed the prayer for bail 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. The "reasonable grounds" mentioned in Section 37(1)(b)(ii) of NDPS Act mean something more than prima facie ground. It implies substantial probable causes for believing that accused is not guilty of the offence charged and points to existence of such facts and circumstances which are sufficient to hold that accused is not guilty.

However the Apex Court in the Case of Union of India vs. Shiv Shankar Keshari, (2007) 7 SCC 798 has held that the court while considering the application for bail with reference to Section 37 of the Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty. In this case prosecution case itself is in doubt due to non-adherence to sampling procedure, not to say of recording any finding regarding guilt of the applicant.

Considering the facts of the case and keeping in mind the arguments advanced on behalf of the parties, the ratio of the Apex Court's judgment in the case of Union of India vs. Shiv Shankar Keshari, (2007) 7 SCC 798, larger mandate of Article 21 of the constitution of India, the nature of accusations, the nature of evidence in support thereof, the severity of punishment which conviction will entail, the character of the accused-applicant, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interest of the public/ State and other circumstances, but without expressing any opinion on the merits, I am of the view that it is a fit case for grant of bail.

Let applicant be released on bail in the aforesaid case crime number on his furnishing a personal bond and two reliable sureties of the like amount to the satisfaction of the court concerned with the following conditions-

(i) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code;

(ii) In case, the applicant misuses the liberty of bail and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the Court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

(iii) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of his bail and proceed against him in accordance with law.

In case, of breach of any of the above conditions, it shall be a ground for cancellation of bail.

Identity and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

Order Date :- 1.4.2025 SS