

# Rana Pratap Yadav vs State Of U.P. on 17 January, 2025

**Author: Ashutosh Srivastava**

**Bench: Ashutosh Srivastava**

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:10685

Court No. - 68

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 35919 of 2024

Applicant :- Rana Pratap Yadav

Opposite Party :- State of U.P.

Counsel for Applicant :- Dheeraj Kumar Pandey, Surya Pratap Singh Parmar

Counsel for Opposite Party :- G.A.

Hon'ble Ashutosh Srivastava, J.

Heard Sri D. K. Pandey, learned counsel for the applicant, learned A.G.A. for the State Respondent and perused the record of the case.

The present bail application has been filed on behalf of applicant Rana Pratap Yadav, under Section 439 of The Code of Criminal Procedure, with a prayer to release him on bail in Case Crime No. 54 of 2024, under Sections 319(2), 318(4), 338, 336(3), 340(2) of the Bhartiya Nyaya Sanhita and Section 8/20 of Narcotic Drugs and Psychotropic Substances Act, 1985, and Section 207 of the Motor Vehicle Act, registered at Police Station Unj, District Bhadohi, during pendency of the trial.

Learned counsel for the applicant submits that as per version of the FIR, during the checking on 04.08.2024, a Baleno Navy Blue Colour Car having chassis number MBHHWV135NB113246 and engine number K12NP7014695 and another vehicle having number plate JH-10-AB-2575 was found to be carrying 200 kg of illegal ganja in a total of 200 packets, which were arrested by the police and illegal ganja was recovered. On checking the said Baleno Car from the e-challan app, the engine

number was found to be DBA1626844 and the chassis number was MA3FFEB1500190210, whereas the engine number on the vehicle is M16AN2018923. Learned counsel for the applicant further submits that on the basis of prior information given by Mukhbir, the Police recovered 200 KG of Ganja from the aforesaid vehicles. The role of the applicant is stated to be in smuggling of ganja and he has been arrested from the spot along with other co-accused. Further the accused used the fake number plate in the alleged vehicle. 100 packets of Ganja were recovered from both the vehicles, the total quantity of which is shown to be 200 KG.

Learned counsel for the applicant submits that the applicant is innocent and has been falsely implicated in the present case due to ulterior motive. It is further submitted that the alleged contraband of 200 KG of Ganja has not been recovered from the personal possession of the applicant. He further submits that the alleged recovery of 200 KG of Ganja, as shown in the first information report, which is above the commercial quantity, is made without complying the mandatory provisions of Sections 42 & 50 of the N.D.P.S. Act and Section 100 and 102 Cr.P.C. There is no independent eye-witness of the alleged recovery from the possession of the applicant. It is further submitted that there is no adequate or substantial compliance with Section 52-A of the N.D.P.S. Act. It is further submitted that in order to make search and recovery of the contraband articles from the body of the applicant, search and recovery has to be in conformity with the requirements of Section 50 of the N.D.P.S. Act. It is further submitted that the applicant has no criminal history. It is next submitted that there is also no possibility of the applicant either fleeing away from the judicial process or tampering with the witnesses. The applicant, who is languishing in jail since 04.08.2024, undertakes that he will not misuse the liberty, if granted. It has also been pointed out that in the wake of heavy pendency of cases in the Court, there is no likelihood of any early conclusion of trial.

Learned AGA submits that the applicant was arrested on the spot. He has further submitted that it is an admitted fact that the recovery of 200 KG of Ganja, which is more than the commercial quantity, has been recovered from the possession of the applicant, hence, Section 37 of NDPS Act is attracted in the present case, therefore, the bail application is liable to be rejected.

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

It is evident that during the checking, 200 KG of Ganja was recovered from the possession of the applicant, which admittedly is more than the commercial quantity, as such, rigors of Section 37 of the NDPS Act are applicable in the instant case.

This Court has considered the recent case of Union of India Vs Md. Nawaz Khan, reported in, AIR 2021 SC 447, which is a case where contraband was concealed in a bag and it was held by Supreme Court that factum of absence of possession of contraband by the accused in itself cannot be sole ground for grant of bail. In paragraph Nos. 20 & 29, it has been said as under:-

"20. 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.

29. In the complaint that was filed on 16 October 2019 it is alleged that at about 1400 hours on 26 March 2019, information was received that between 1500-1700 hours on the same day, the three accused persons would be reaching Uttar Pradesh. The complaint states that the information was immediately reduced to writing. Therefore, the contention that Section 42 of the NDPS Act was not complied with is prima-facie misplaced. The question is one that should be raised in the course of the trial."

The Hon'ble Apex Court further in the case of Md. Nawaz Khan (supra) in paragraph nos. 24 & 25 has also stated as under:

"24. 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 vs. Rattan Mallik, 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.

25. In line with the decision of this Court in Rattan Mallik (supra), 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."

It is further asserted by the Hon'ble Supreme Court vide para 25, referred to above, that finding of the absence of possession of the contraband on the person of the accused does not absolve him of the level of scrutiny required under Section 37 (1)(b)(ii) of the NDPS Act.

Learned counsel for the accused has not been able to point out anything to this Court so as to come to conclusion that the accused is not guilty of the offence. The fact that accused was not in physical possession of contraband would not be enough to conclude that accused is not guilty. The contention that recovery was not from conscious possession of the accused is noted to be rejected in view of recent decision of Supreme Court in Md. Nawaz Khan's case (supra).

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 is also a question of fact which requires to be decided at the time of trial. It is also a question of fact as to whether the recovery was made on the spot or any

substantial delay in taking inventory, photograph and samples of seized articles as contemplated in Section 52-A of the said Act would vitiate the trial or not, can only be decided during trial on the basis of evidence on record.

In the case of State Vs. Syed Amir Hasnain, (2002) 10 SCC 88, the Hon'ble Apex Court has held in view of the two judgments of this Court in Union of India Vs Ram Samujh, (1999) 9 SCC 382 and Union of India Vs Aharwa Deen, (2000) 9 SCC 382, even the High Court would be bound by the provisions of Section 37 of the NDPS Act and would not be entitled to release the accused under the provisions of the NDPS Act unless the provisions of Section 37 of the Act are satisfied.

In the case of Megh Singh Vs. State of Punjab, 2004 (1) CCSC 337, the Hon'ble Supreme Court held that a bare reading of Section 50 shows that it only applies in case of personal search of a person. It does not extend to search of a vehicle or a container or a bag, or premises. The law is well settled that the evidence of a public officer cannot be discarded or thrown out only on the ground that he is a police officer.

The accusation in the present case is with regard to the commercial quantity. Once the bail is opposed to a person accused of the enumerated offences, in case, the Court proposes to grant bail to such a person, two conditions are to be mandatorily satisfied in addition to the normal requirements under the provisions of the Code of Criminal Procedure, 1973 or any other enactment, (i) the Court must be satisfied that there are reasonable grounds for believing that the person is not guilty of such offence.

In Criminal Appeal No.(s) 154-157 of 2020, State of Kerala Vs. Rajesh and others, the Hon'ble Supreme Court has held on 24.01.2020 that the expression "reasonable grounds" means something more than prima-facie grounds, and (ii) that person is not likely to commit any offence while on bail. It is the mandate of the legislature which is required to be followed. The non-obstante clause with which this Section starts should be given its due meaning and clearly it is intended to restrict the powers to grant bail. To check the menace of dangers drugs and psychotropic substances flooding the market, the Parliament has provided that the person accused of the offences under the Act should not be released on bail during the trial unless the mandatory conditions provided under Section 37 of the Act, 1985 are satisfied.

In State of M.P. Vs. Kajad, (2001) 7 SCC 673, the Hon'ble Supreme Court has held that negation of bail is the rule and its grants an exception under (ii) of clause (b) of Section 37(1) of the Act, 1985.

In Criminal Appeal No.(s) 154-157 of 2020 (Supra) the Hon'ble Supreme Court has held that liberal approach in the matter of bail under the NDPS Act, is uncalled for. Therefore, it is quite clear that an order of bail cannot be granted in an arbitrary or fanciful manner. A ratio decidendi of the judgment of Hon'ble Apex Court in Anil Kumar Yadav Vs. State (N.C.T.) of Delhi and another, 2018(1) CCSC 117 is that in serious crimes, the mere fact that the accused is in custody for more than one year, may not be a relevant consideration to release the accused on bail.

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.

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.

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 :- 17.1.2025 pks