



2025:UHC:4285

SL. No.	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGE'S ORDERS
			<p><b><u>BA1/182/2025</u></b></p> <p><b><u>Hon'ble Rakesh Thapliyal, J.</u></b></p> <p>1. Mr. Saurabh Kumar Pandey, learned counsel for the applicant.</p> <p>2. Mr. Pankaj Joshi, learned A.G.A. for the State.</p> <p>3. Present applicant Mithilesh Bhagat is praying for regular bail in relation to FIR dated 09.01.2025, registered as FIR No. 08 of 2025 at P.S. Nanakmatta District U.S. Nagar wherein four persons were implicated including present applicant for the offence punishable under Section 8/20 of the NDPS Act.</p> <p>4. Learned counsel for the applicant submits that applicant is innocent and has been falsely implicated and the alleged contraband 'charas' which is shown to be recovered from the present applicant is commercial one, i.e., 1.120 kg. He submits that there are total four accused persons and from other two accused, namely, Manoj Singh and Har Singh Faraswan, the contraband which was shown to be recovered was non-commercial and both of them have already been enlarged on bail.</p> <p>5. Learned counsel for the applicant further submits that so far as alleged contraband, which is shown to be recovered from the present applicant which is commercial one is concerned, in fact, at the time of search and seizure there was no proper substantial compliance of Section 50 of the NDPS Act which, in fact, was mandatory. He submits that the entire procedure, as adopted, at the time of search and seizure is completely faulty since after making search on the present applicant in respect of the remaining accused, no procedure as</p>



		<p>prescribed under Section 50 of the NDPS Act has been followed which itself is evident from the recovery memo. He submits that even if it was a chance recovery, it is mandatory to follow the procedure as prescribed under Section 50 of the NDPS Act. He further submits that not only this even there is no proper substantial compliance of Section 42 of the NDPS Act and also pointed out that no such consent letter was prepared at the time of search.</p> <p>6. Mr. Pande further pointed out that as there is no substantial compliance of Section 50 of the NDPS Act which itself reveals that the applicant is not guilty of the offence as alleged to be committed.</p> <p>7. Apart from this, Mr. Pande submits that the applicant has no criminal history and if the applicant is admitted to bail then there is less possibility that the applicant after being released on bail will commit such offence while on bail or misuse the bail.</p> <p>8. The counter affidavit has been filed by the prosecution wherein it is contended that since it was a chance recovery, therefore, there was no need to comply the procedure as prescribed under Section 50 of the NDPS Act. On this, Mr. Pande, pointed out that if it was a chance recovery then after search and seizure of the first accused it was mandatory on the part of the investigating officer to comply with the procedure as prescribed under Section 50 of the NDPS Act against rest of the accused which admittedly has not been done and this fact has not been disputed by Mr. Joshi, learned A.G.A.</p> <p>9. Mr. Joshi pointed out that since the alleged contraband recovered from the applicant is commercial one, therefore, in view of Section 37 of the NDPS Act, the applicant does not deserve for bail. He further submits that even if the applicant has no criminal history even then the applicant cannot be released on bail since</p>
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		<p>the alleged contraband shown to be recovered is commercial one.</p> <p>10. After hearing the arguments of the learned counsel for the parties, admittedly the contraband which is shown to be recovered from the possession of the applicant is commercial quantity, therefore, twin condition as stipulated under Section 37 of the NDPS Act has to be dealt with. So far as arguments as advanced by Mr. Pande with regard to the non compliance of the procedure as prescribed under Section 50 of the NDPS is concerned, on perusal of the recovery memo it reveals that in fact while conducting search and seizure on the accused persons, the procedure as prescribed under Section 50 of the NDPS Act is completely overlooked. Even if it was a chance recovery then after search of the first accused the investigating officer should comply with the procedure in respect of the remaining accused , which in fact is the mandate of Section 50 of the NDPS Act, therefore, this Court is primarily of the view that there are reasonable ground for believing that the applicant is not guilty of the offence as alleged.</p> <p>11. Apart from this, admittedly the applicant have no any criminal antecedent which has also not been disputed by the learned A.G.A., therefore, this Court is of the view that if the applicant is admitted to bail then he is not likely to commit any offence while on bail, even for that purpose some stringent condition can be imposed so that there may not be any possibility for misusing the bail.</p> <p>12. After taking into consideration the submissions as advanced by the learned counsel for the parties, this Court is of the view that since twin condition as stipulated under Section 37 of the NDPS Act are fulfilled in view of the observations as made above, and, as such the applicant deserves for bail.</p> <p>13. Accordingly, without expressing any</p>
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			<p>opinion on the merit of the case, the bail application is allowed.</p> <p>14. Let the applicant Mithilesh Bhagat be released on bail on his executing a personal bond and furnishing two reliable sureties of the like amount to the satisfaction of the court concerned.</p> <p>15. It is made clear that after being released on bail if the applicant is found to be indulged in any such activity of the same nature, then the prosecution is free to move an application for cancellation of bail of the applicant.</p> <p style="text-align: right;"><b>(Rakesh Thapliyal, J.)</b> <b>22.05.2025</b></p> <p>Parul</p>
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