(2025) 1 ILRA 4
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 17.01.2025

BEFORE

THE HON'BLE ROHIT RANJAN AGARWAL, J.

Criminal Misc. Bail Application No. 23378 of 2024

Bajarangi Singh Yadav ...Applicant
Versus
State of U.P. ...Opposite Party

Counsel for the Applicant:
P.K. Singh, Praveen Kumar Singh, Sunil Kumar Pandey

Counsel for the Opposite Party:
G.A.

Criminal Law - Narcotic Drugs and Psychotropic Substances Act, 1985 - Sections 8/21 & 37 - Bail - As per prosecution story, contraband (Heroine) recovered from vehicle in four packets, total weighting 1 kg, vehicle was being driven by applicant/driver in which two other persons were also sitting - When police intercepted vehicle, search was conducted as per established procedure and three packets of 250 gms. each were found from pocket of all three persons sitting in vehicle & anr.packet containing 250 gms contraband (Heroine) was found beneath seat of applicant - Applicant submitted that necessary compliance u/s 50 and 52-A of Act were not done and sample were not prepared and sent for chemical examination - Co-accused already enlarged on bail and languishing in jail since 28.03.2024. (Para 3,4)

Held, argument raised by applicant stands adjudicated on basis of guidelines summarized by Apex Court in judgment rendered in case of Kashif (infra). (Para 27)

Looking to huge recovery of contraband (Heroine) from joint possession of applicant and co-accused, also from alleged vehicle, no ground to release applicant on bail - Five other criminal cases registered against applicant and recovery made was above commercial quantify. (Para 28)

Bail application rejected. (E-13)

List of Cases cited:

1. Simarnjit Singh Vs St. of Pun., Criminal Appeal No.1443/2023, 2023 Supreme (SC) 658

2. Mangilal Vs St. of M. P., 2023 Supreme (SC) 703

3. U.O.I. Vs Mohanlal & anr., 2016 Supreme (SC) 82

4. U.O.I. Vs Ram Samujh & anr., (1999) 9 SCC 429, (Para 7, 8)

5. U.O.I. Vs Shiv Shanker Kesari, (2007) 7 SCC 798, (Para 6, 7)

6. U.O.I. Vs Rattan Mallik @ Habul, (2009) 1 SCC (Cri) 831, (Para 14)

7. St. of Kerala Etc. Vs Rajesh Etc., AIR 2020 SC 721, (Para 20, 21)

8. U.O.I.Vs Prateek Shukla AIR 2021 SC 1509

9. St. (NCT of Delhi) Narcotics Control Bureau Vs Lokesh Chadha, (2021) 5 SCC 724

10. U.O.I.through Narcotics Control Bureau, Lucknow Vs Mohd. Nawaz Khan, (2021) 10 SCC 100, (Para 23, 25, 26, 28, 29)

11. Megh Singh Vs St. of Pun., 2003 CRI. L.J. 4329, (Para 9 to 13,16)

12. Dehal Singh Vs St. of H. P., 2011 (72) ACC 661

13. Narcotics Control Bureau Vs Kashif, Criminal Appeal No.5544 of 2024, arising out of SLP (Crl.) No.12120 of 2024, decided on 20.12.2024, (Para 20, 21, 23, 24, 31 to 39)

14. Pooran Mal Vs Director of Inspection (Investigation) New Delhi & ors., (1974) 1 SCC 345

15. St. of Punjab Vs Baldev Singh, (1999) 6 SCC 172

16. St. of H.P. Vs Pirthi Chand & anr., (1996) 2 SCC 37

17. St. of Pun. Vs Makhan Chand, (2004) 3 SCC 453

18. U.O.I. Vs Mohanlal & anr., (2016) 3 SCC 379

19. Yusuf @ Asif Vs St., 2023 SCC Online SC 1328

20. Mohammed Khalid & anr.Vs St. of Telangana, (2024) 5 SCC 393

(Delivered by Hon'ble Rohit Ranjan Agarwal, J.)

1. Heard learned counsel for the applicant and learned A.G.A. for the State.

2. By means of the present bail application, the applicant seeks bail in Case Crime No. 130 of 2024, under Section 8/21 of Narcotic Drugs and Psychotropic Substances Act, 1985 *(hereinafter referred to as "NDPS Act"),* Police Station- Kotwali, District- Ghazipur, during the pendency of trial.

3. The prosecution story, as unfolded from the First Information Report (FIR) is that Contraband (Heroine) has been recovered from Scorpio No.UP 32 LK4587 in four packets, total weighting 1 kg. The vehicle in question was being driven by the applicant in which two other persons were also sitting. When the police had intercepted the vehicle, the search was conducted as per the established procedure and three packets of 250 gms. Each were found from the pocket of all the three persons sitting in the scorpio vehicle and another packet containing 250 gms Contraband (Heroine) was found beneath the seat of the applicant who was driving the vehicle.

4. Learned counsel for the applicant submitted that the applicant is Driver of the said vehicle and has no concerned with the aforesaid Contraband, which is alleged to have been recovered from the vehicle. It is further contended that the applicant has a criminal history of 5 cases in which he is on bail. It is next contended that necessary compliance under Section 50 and 52-A of the Act were not done and the sample were not prepared and sent for chemical examination. The other two accused have already been enlarged on bail. It was lastly contended that the applicant is languishing in jail since 28.03.2024. Reliance has been placed upon decision of Apex Court rendered in **Simarnjit Singh vs. State of Punjab 2023 Supreme (SC) 658; Mangilal vs. State of Madhya Pradesh 2023 Supreme (SC) 703; and, Union of India vs. Mohanlal & Anr. 2016 Supreme (SC) 82.**

5. Learned A.G.A. has opposed the bail application and submitted that the applicant was apprehended on spot along with two other co-accused who were carrying 1 kg. of Contraband (Heroine). The recovered quantity from applicant is well above the commercial quantity. It is further submitted that the recovery was made from the vehicle and it amounts to conscious possession and necessary compliance was done. He further submitted that the sample of the recovered contraband was sent of chemical analysis and the report of FSL had come wherein the recovered material was found to be Contraband (Heroine).

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

7. This is a case where contraband (Heroine) amounting to 1 kg. has been recovered from the possession of the applicant and other co-accused.

8. 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."

9. 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.

10. 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 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."

11. 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."

12. 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."

13. 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."

14. 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.

15. 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."

16. 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 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.

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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.

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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."

17. Supreme Court while dealing with the question of possession and application of Section 50 in case of **Megh Singh Vs. State of Punjab, 2003 CRI. L.J. 4329**, held that word "possession' includes conscious possession. Further Section 50 applies in case of personal search of a person and it does not extend to search of a vehicle or container or a bag or premises. Relevant paragraph nos. 9 to 13 and 16 are extracted here as under;

"9. The expression 'possession' is a polymorphous term which assumes different colours in different contexts. It may carry different meanings in contextually different backgrounds. It is impossible, as was observed in Superintendent & Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja and Ors. (AIR 1980 SC 52), to work out a completely logical and precise definition of "possession" uniformally applicable to all situations in the context of all statutes.

10. The word 'conscious' means awareness about a particular fact. It is a state of mind which is deliberate or intended.

11. As noted in Gunwantlal v. The State of M.P. (AIR 1972 SC 1756) possession in a given case need not be physical possession but can be constructive, having power and control over the article in case in question, while the person whom physical possession is given holds it subject to that power or control.

12. The word 'possession' means the legal right to possession (See Health v. Drown (1972) (2) All ER 561 (HL). In an interesting case it was observed that where a person keeps his fire arm in his mother's flat which is safer than his own home, he must be considered to be in possession of the same. (See Sullivan v. Earl of Caithness (1976 (1) All ER 844 (QBD).

13. 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 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. This position was highlighted in Madan Lal and Anr. v.

State of Himachal Pradesh (2003 (6) SCALE 483).

16. 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. (See Kalema Tumba v. State of Maharashtra and Anr. (JT1999 (8) SC 293), The State of Punjab v. Baldev Singh (JT1999 (4) SC 595), Gurbax Singh v. State of Haryana(2001(3) SCC 28). The language of Section 50 is implicitly clear that the search has to be in relation to a person as contrasted to search of premises, vehicles or articles. This position was settled beyond doubt by the Constitution Bench in Baldev Singh's case (supra). Above being the position, the contention regarding non-compliance of Section 50 of the Act is also without any substance."

18. While dealing with the provision of Section 50 of the Act, Apex Court in case of **Dehal Singh Vs. State of Himachal Pradesh, 2011 (72) ACC 661,** held that Section 50 relates to the search of a person and not of the vehicle and thus there was no requirement for informing the applicant of the right to be searched in presence of a gazetted officer of Magistrate.

19. Reliance placed by applicant's counsel on the judgments of Apex Court is of no help as the State has come with the case that necessary compliance of Section 50 of the Act has been done and as per report of FSL, Contraband recovered was found to be Heroine.

20. Section 52A was inserted by the Act 2 of 1989 and came into effect from 29.05.1989. Prior to insertion of Section 52A, Central Government had issued a notification on 17.03.1986 in exercise of power under the NDPS Act and constituted Narcotics Control Bureau (NCB). The NCB had issued Standing Instructions No.1 of 88 datd 15.03.1988. The necessity to insert Section 52A arose in view of International Convention of 1988 held by United Nations.

21. After the said insertion of Section 52A, Standing Order No.1 of 1989 was followed. From time to time, Central Government had been issuing notifications in respect of disposal of narcotic drugs and psychotropic substances, controlled substances and conveyances. The matter in regard to compliance of Section 52A of the Act came up for consideration before Hon'ble Apex Court in case of **Narcotics Control Bureau vs. Kashif in Criminal Appeal No.5544 of 2024** arising out of Special Leave Petition (Crl.) No.12120 of 2024, which was decided on 20.12.2024.

22. Hon'ble Supreme Court considering the legislative intent and the history of the NDPS Act and insertion of Section 52A held that the heading of Section 52A itself leave no room of doubt that the provision was inserted for an early disposal of the seized narcotic drugs and psychotropic substances, as one of the measures required to be taken to implement the provisions of the International Conventions on Narcotics Drugs and Psychotropic Substances. Relevant paras 20, 21, 23 and 24 of the judgment are extracted here as under :-

"20. Now, so far as Section 52A is concerned, the language employed therein itself is very clear that the said provision was inserted for an early disposal of the seized narcotic drugs and psychotropic substances, having regard to the hazardous nature, vulnerability to theft,

substitution, constraints of proper storage space and other relevant considerations. Apart from the plain language used in the said section, its Heading also makes it clear that the said provision was inserted for the Disposal of the seized narcotic drugs and psychotropic substances. As per the well settled rule of interpretation, the Section Heading or Marginal note can be relied upon to clear any doubt or ambiguity in the interpretation of any provision and to discern the legislative intent. The Section Heading constitutes an important part of the Act itself, and may be read not only as explaining the provisions of the section, but it also affords a better key to the constructions of the provisions of the section which follows than might be afforded by a mere preamble. (Eastern Coalfields Limited vs. Sanjay Transport Agency and Another, (2009) 7 SCC 345)

21. The insertion of Section 52A with the Heading "Disposal of seized narcotic drugs and psychotropic substances" along with the insertion of the words "to provide for the forfeiture of property derived from or used in, illicit traffic in narcotics drugs and psychotropic substances, to implement the provisions of International Conventions on Narcotics Drugs and Psychotropic Substances", in the long title of the NDPS Act, by Act 2 of 1989 w.e.f. 29.05.1989, leaves no room of doubt that the said provision of Section 52A was inserted for an early disposal of the seized narcotic drugs and psychotropic substances, as one of the measures required to be taken to implement the provisions of the International Conventions on Narcotics Drugs and Psychotropic Substances. The Heading of Section 52A i.e. Disposal of seized narcotic drugs and psychotropic substances delineates the object and reason of the insertion of said provision and such Heading cannot be underscored. From the bare reading of Section 52A also it is very much discernable that sub-section (1) thereof empowers the Central Government, having regard to the hazardous nature, vulnerability to theft, substitution, constraint of proper storage space or any other relevant consideration, to specify narcotic drugs, psychotropic substances for the purpose of their disposal as soon as may be after their seizure, by such officer and in such manner as the Central Government may determine after following the procedure specified in sub-section (2).

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23. As demonstrated above, sub-section (2) of Section 52A specifies the procedure as contemplated in sub-section (1) thereof, for the disposal of the seized contraband or controlled narcotic drugs and psychotropic substances. Any deviation or delay in making the application under subsection (2) by the concerned officer to the Magistrate or the delay on the part of the Magistrate in deciding such application could at the most be termed as an irregularity and not an illegality which would nullify or vitiate the entire case of the prosecution. The jurisprudence as developed by the courts so far, makes clear distinction between an "irregular proceeding" and an "illegal proceeding." While an irregularity can be remedied, an illegality cannot be. An irregularity may be overlooked or corrected without affecting the outcome, whereas an illegality may lead to nullification of the proceedings. Any breach of procedure of rule or regulation which may indicate a lapse in procedure, may be considered as an irregularity, and would not affect the outcome of legal proceedings but it can not be termed as an illegality leading to the nullification of the proceedings. 24.Section 52A was inserted only for the purpose of early disposal of the

seized contraband drugs and substances, considering the hazardous nature, vulnerability to theft, constraint of proper storage space etc. There cannot be any two opinions on the issue about the early disposal of the contraband drugs and substances, more particularly when it was inserted to implement the provisions of International Convention on the Narcotics Drugs and Psychotropic Substances, however delayed compliance or non-compliance of the said provision by the concerned 23 officer authorised to make application to the Magistrate could never be treated as an illegality which would entitle the accused to be released on bail or claim acquittal in the trial, when sufficient material is collected by the Investigating Officer to establish that the Search and Seizure of the contraband substance was made in due compliance of the mandatory provisions of the Act."

23. The Apex Court further considered the scope of Section 52A in light of the decision of Constitution Bench in case of **Pooran Mal vs. Director of Inspection (Investigation) New Delhi and others, (1974) 1 SCC 345** and Constitution Bench decision in case of **State of Punjab vs. Baldev Singh (1999) 6 SCC 172** as well as decision in case of State of **H.P. vs. Pirthi Chand and Another (1996) 2 SCC 37** and **State of Punjab vs. Makhan Chand (2004) 3 SCC 453** and held that evidence collected during course of investigation in legal and proper manner and sought to be used in course of trial with regard to the seized contraband substances could not be simply brushed aside on the ground of procedural irregularity if any, committed by the concerned officer authorized in making application to the Magistrate as contemplated under Section 52A of the Act. Relevant paras 31, 32 and 33 of the judgment in case of **Kashif (supra)** are extracted here as under :-

"31. From the above decisions, the position that emerges is that this Court in catena of decisions, has approved the procedure of spot searches and seizures in compliance with the Standing Orders and the Notifications issued by the NCB and the Central Government, and upheld the convictions on being satisfied about the search and seizure made by the officers as per the provisions of the Act and being satisfied about the scientific evidence of F.S.L. reports etc. Even otherwise, in 28 view of the law laid down by the Constitution Benches in case of Pooran Mal and in case of Baldev Singh, any procedural illegality in conducting the search and seizure by itself, would not make the entire evidence collected thereby inadmissible. The Court would have to decide the admissibility of evidence in the context and the manner in which the evidence was collected and was sought to be used during the course of trial. The evidence collected during the course of investigation in legal and proper manner and sought to be used in the course of trial with regard to the seized contraband substance could not be simply brushed aside, on the ground of procedural irregularity if any, committed by the concerned officer authorised in making application to the Magistrate as contemplated under Section 52A of the Act.

32. Significantly, the Authorised Officer can make the application under subsection (2) of Section 52A for three purposes – (a) for certifying the correctness of the inventory prepared by him; or (b) taking in presence of such magistrate, photographs of the seized drugs, substances and conveyances and certifying such photographs as true; or (c)

allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate, and certifying the correctness of any list of samples so drawn. The use of the conjunction "OR" made in between the three purposes mentioned therein, itself makes it explicitly clear that the purposes for which the application could be made under sub-section (2) are alternative and not cumulative in nature. Such provision specifying multiple alternative purposes could not be construed as a mandatory provision muchless its non-compliance fatal to the case of prosecution.

33. Though it is true that the inventory certified, photographs taken and the list of samples drawn under sub-section (2) has to be treated by the Court as primary evidence in view of sub-section (3), nonetheless the documents like Panchnama, seizure memo, arrest memo etc. prepared by the Investigating Officer on the spot or during the course of investigation are also primary evidence within the meaning of Section 62 of the Evidence Act, carrying the same evidentiary value as any other primary evidence. Such primary evidence with regard to Search and Seizure of the contraband substance could not be overlooked merely because some lapse or non-compliance is found of Section 52A of the Act."

24. The Apex Court further went on to hold that in the decision rendered in case of **Union of India vs. Mohanlal and Another (2016) 3 SCC 379**, the issue of pilferage of contraband was the main issue. The prime focal in case of **Mohanlal (supra)** was disposal of seized contraband goods as contemplated in Section 52A. Relevant paras 34 and 35 of the judgment in **Kashif (supra)** are extracted here as under :-

*"34. In our opinion reliance placed by the High Court on the decision of this Court in **Union of India Vs. Mohanlal and Another (2016) 3 SCC 379**, is thoroughly misplaced. In the said case, the issue of pilferage of contraband was the main issue. The Court after noticing the non-compliance of the procedure laid down in the Standing Order No. 1 of 89 dated 13.06.1989, and the possibility of the pilferage of contraband goods and their return to the market place for circulation, had appointed an amicus curiae for making a realistic review of the procedure for search, disposal or destruction of the narcotics and remedial steps that need to be taken to plug the loopholes, if any. The Court, thereafter, had raised the queries with regard to the seizure, storage, disposal/destruction and also with regard to the judicial supervision in respect of the seized narcotic drugs and psychotropic substances. The prime focal in case of Mohanlal was the disposal of seized contraband goods as contemplated in Section 52A. Though it held that the process of drawing samples has to be done in presence of and under the supervision of the Magistrate, it nowhere held that non-compliance or delayed compliance of the procedure prescribed under Section 52A (2) would vitiate the trial or would entitle the accused to be released on bail.*

35. None of the provisions in the Act prohibits sample to be taken on the spot at the time of seizure, much less Section 52A of the said Act. On the contrary, as per the procedure laid down in the Standing Orders and Notifications issued by the NCB and the Central Government before and after the insertion of Section 52A till the Rules of 2022 were framed, the concerned officer was required to take samples of the seized contraband substances on the spot of recovery in

duplicate in presence of the Panch witnesses and the person in whose possession the drug or substance recovered, by drawing a Panchnama. It was only with regard to the remnant substance, the procedure for disposal of the said substance was required to be followed as prescribed in Section 52A."

25. While considering the recent judgment of Apex Court rendered in case of **Simarnjit vs. State of Punjab (Criminal Appeal No.1443/2023); Yusuf @ Asif vs. State 2023 SCC Online SC 1328 and Mohammed Khalid and Another vs. State of Telangana (2024) 5 SCC 393; the Apex Court in Kashif (supra)** in paras 36, 37 and 38 held as under :-

*"36. At this stage, we must deal with the recent judgments in case of **Simarnjit vs. State of Punjab, (Criminal Appeal No.1443/2023), in case of Yusuf @ Asif vs. State (2023 SCC Online SC 1328), and in case of Mohammed Khalid and Another vs. State of Telangana ((2024) 5 SCC 393**) in which the convictions have been set aside by this Court on finding non-compliance of Section 52A and relying upon the observations made in case of Mohanlal. Apart from the fact that the said cases have been decided on the facts of each case, none of the judgments has proposed to lay down any law either with regard to Section 52A or on the issue of admissibility of any other evidence collected during the course of trial under the NDPS Act. Therefore, we have considered the legislative history of Section 52A and other Statutory Standing Orders as also the judicial pronouncements, which clearly lead to an inevitable conclusion that delayed compliance or noncompliance of Section 52A neither vitiates the trial affecting conviction nor can be a sole ground to seek bail. In our opinion, the decisions of Constitution Benches in case of Pooran Mal and Baldev Singh must take precedence over any observations made in the judgments made by the benches of lesser strength, which are made without considering the scheme, purport and object of the Act and also without considering the binding precedents.*

37. It hardly needs to be reiterated that every law is designed to further ends of justice and not to frustrate it on mere technicalities. If the language of a Statute in its ordinary meaning and grammatical construction leads a manifest contradiction of the apparent purpose of the enactment, a construction may be put upon it which modifies the meaning of the words, or even the structure of the sentence. It is equally settled legal position that where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskillfulness or ignorance of the law. In Maxwell on Interpretation of Statutes, Tenth Edition at page 229, the following passage is found: -

"Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. ... Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used."

38. As observed by this Court in ***K.P. Varghese vs. Income Tax Officer, Ernakulam and Another (1981) 4 SCC 173,*** *a statutory provision must be so construed, if it is possible, that absurdity and mischief may be avoided. Where the plain and literal interpretation of statutory provision produces a manifestly absurd and unjust result, the Court may modify the language used by the Legislature or even do some violence to it, so as to achieve the obvious intention of the Legislature and produce a rational construction and just result."*

26. The Apex Court, in para 39 of the judgment, had laid down the guidelines in regard to consideration of bail application in cases under the NDPS Act and the purpose of Section 52A and disposal of seized narcotics drugs and psychotropic substances, which are extracted hereas 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."

27. The argument raised from the applicant's side stands adjudicated on the basis of guidelines summarized by the Apex Court in the recent judgment rendered in case of **Kashif (supra).**

28. Looking to the huge recovery of contraband (Heroine) from the joint possession of the applicant as well as other

co-accused and from the vehicle in question, I do not find any reasonable ground in terms of Section 37 of NDPS Act to release the applicant on bail. Moreover, there are five other criminal cases registered against the applicant and the recovery made is above the commercial quantify.

29. 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.

30. In the result, the bail application stands **rejected.**

(2025) 1 ILRA 17
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 20.01.2025

BEFORE

THE HON'BLE AJAY BHANOT, J.

Criminal Misc. Bail Application No. 25993 of 2024

Smt. Rekha ...Applicant
Versus
State of U.P. ...Opposite Party

Counsel for the Applicant:
Rahul Upadhyay

Counsel for the Opposite Party:
G.A., R.P.S. Chauhan

Criminal Law - Indian Penal Code, 1860 - Sections 363, 302 & 201 - Code of Criminal Procedure, 1973 - Section 309 - Constitution of India, 1950 - Articles 15(3), 21, 21-A, 45, 47, 39(e) & 39(f) - Juvenile Justice (Care and Protection of Children) Act, 2015 - Sections 2(14) (v), 2 (22), 2(21), 30, 31 & 37 - Right of Children to Free and Compulsory Education Act, 2009 - Sections 2(d), 3, 4, 13, 14 & 15 - UP Jail Manual, 2022 - Rule 335, 336, 337, 339 - Model Prison Manual, 2016 - Rules 26.36 to 26.44 - Legal Services Authorities Act, 1987 - Sections 2(c), 12 & 13 - Bail - Issue before Court was education, welfare, holistic environment for growth, development of strong moral fabric and ethical framework in children of jail inmates who reside in jails with them - Applicant was in jail since 16.10.2023 - Bail application was rejected by trial court on 14.05.2024 - Applicant's 5 year old son was residing with her in prison after her incarceration and entirely dependent on her. (Para 4)

Held, applicant has been identified as principal offender who murdered her minor step child and threw his body in tank situated in house and dead body was recovered at pointing out of her - Applicant had motive to commit offence which was grave - Likelihood that applicant had committed offence - No case for bail was made out - Thus, directions to trial court to expedite trial and also to concern officers to prepare child care plan for son of applicant within two months after due consultation with various authorities and experts. (Para 93, 96, 114)

Bail application dismissed. (E-13)

List of Cases cited:

1. Ramu Vs St. of U.P., 2024 SCC OnLine All 4618

2. Anil Gaur @ Sonu @ Sonu Tomar Vs St. of U.P., 2022 SCC OnLine All 623

3. Junaid Vs St. of U.P., 2021 (6) ADJ 511

4. Aman Vs St. of U.P., 2023 (8) ADJ 523

5. Bhanwar Singh @ Karamvir Vs St. of U.P., 2023 SCC OnLine All 734

6. Noor Alam Vs St. of U.P., 2024 (5) ADJ 766