

point of time. The report as was discussed and believed in the said case, was rightly so done but here I do not find any such report available from any technical expert. Judgment is therefore, again distinguishable on facts being in particular set of facts of that case and so is of no help to contesting respondents.

13. Sri Manas Bhargava very fairly concedes at this stage that the objection filed by the petitioner had remained undisposed of even at the stage of final hearing of the mater while the court proceeded to believe that Advocate Commissioner's report that was seriously objected.

14. In such above view of the mater, therefore, I am not able to sustain the findings returned by the trial court as well as the findings returned by the court of appeal confirming the findings of the Prescribed Authority on the issue whether the building was in a dilapidated condition and deserved release under Section 21(1)(b) of Act No. 13 of 1972. Both the orders are hereby set aside.

15. Matter is remitted to the Prescribed Authority to be decided afresh after considering the objections of the petitioner to the Advocate Commissioner's report and disposing of the same first. It is further provided that it would be more desirable if the court proceeds to call for an expert report in respect of the condition of the building in question so that proper adjudication of the point is done for considering the application for release under Section 21(1)(b) of Act No. 13 of 1972.

16. Both the parties shall appear on or before 25.11.2022 before the Prescribed

Authority. The Prescribed Authority shall thereafter proceed to decide the matter finally in the light of observations made herein above and also by giving full opportunity of hearing to the contesting parties, as expeditiously as possible, preferably within a period of three months from the date of production of certified copy of this order. It is further provided that in the meanwhile, the petitioner would continue to pay rent as he has been paying till now.

17. With the aforesaid observations and directions, this petition stands **allowed** with no order as to cost.

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**(2022) 11 ILRA 907**

**APPELLATE JURISDICTION**

**CRIMINAL SIDE**

**DATED: ALLAHABAD 17.10.2022**

**BEFORE**

**THE HON'BLE SUBHASH VIDYARTHI, J.**

Criminal Misc. Bail Application No. 7858 of 2022

**Pavan Kumar Agrawal ...Applicant (In Jail)  
Versus  
State of U.P. & Anr. ...Opposite Parties**

**Counsel for the Applicant:**

Sri Samir Srivastava, Sri Ankit Agarwal, Sri Ravitendra Pratap Singh Chandel, Sri Som Veer

**Counsel for the Opposite Parties:**

G.A., Sri Krishna Agarawal

**Criminal Law - Narcotic Drugs and Psychotropic Substances Act, 1985 -**

**Section 52 A-**Applicant's elder brother holds a license to 'Sell, stock, exhibit or offer for sale, or distribute by wholesale, drugs other than those specified in Schedule C, C(1) and X' and runs medical store-by another license -authorized to deal in drugs specified in Schedule C and C(1)

excluding those who specified in Schedule 'X'-elder brother does not keep good health and Applicant looks after the business-substances recovered during the raid were medicines manufactured by established manufacturing companies-bills were shown -holds license-procedure u/s 52A has not been followed-confessional statement not admissible in evidence-no criminal history.

**Bail allowed.** (E-9)

**List of Cases cited:**

1. Mohd. Sahabuddin Vs St.of Assam, (2012) 13 SCC 491
2. Vibhor Rana Vs U.O.I., 2021 SCC OnLine All 908
3. Makhan Singh Vs St.of Har., (2015) 12 SCC 247
4. Khet Singh Vs U.O.I., (2002) 4 SCC 380
5. Noor Aga Vs St.of Pun., (2008) 16 SCC 417
6. U.O.I. Vs Mohanlal, (2016) 3 SCC 379
7. St.of Punjab Vs Baldev Singh, (1999) 6 SCC 172
8. Tofan Singh Vs St.of T.N., (2021) 4 SCC 1
9. Taylor Vs Taylor (1875) 1 Ch D 475
10. Nazir Ahmad Vs King Emperor, AIR 1936 PC 253
11. U.O.I. Vs Rattan Mallik, (2009) 2 SCC 624

(Delivered by Hon'ble Subhash Vidyarthi, J.)

1. Heard Sri Ankit Agarwal Advocate, the learned Counsel for the applicant and Sri Krishna Agarwal Advocate, the learned counsel representing the Central Bureau of Narcotics (which will hereinafter be referred to as "C.B.N.').

2. The instant application has been filed seeking release of the applicant on

bail in C.B.N. Case Crime No. 04 of 2021, under Sections 21/22/25/28/30/35 of Narcotic Drugs and Psychotropic Substances Act, 1985 (which will hereinafter be referred to as "the Act'), Police Station C.B.N. New Delhi.

3. On 26-10-2021, the officers of C.B.N. had conducted a search at the premises of M/s G. M. Traders and it is alleged that various narcotic and psychotropic drugs were recovered from the premises and the applicant was arrested from the premises.

4. In the affidavit filed in support of the bail application it has been stated that the applicant's elder brother Lakshman Agrawal holds a license to "Sell, Stock, Exhibit or offer for sale, or distribute by wholesale, drugs other than those specified in Schedule C, C (1) and X' and he is running his medical store in the name and style of "M/s G. M. Traders' and by means of another license, he has been authorised to deal in drugs specified in Schedule C and C(1), excluding those who specified in Schedule "X'.

5. It has further been stated in the affidavit that Sri. Lakshman Agrawal does not keep good health and, therefore, the applicant looks after his business.

6. It has further been stated in the affidavit that the applicant is innocent and he has been falsely implicated in the present case; that the applicant has no criminal history and he is languishing in jail since 27-10-2021.

7. The C.B.N. has filed a counter affidavit stating that 31456 capsules of Tramadol, 158 injections and 800 tablets of Clonazepam, 9400 injections of

Pentazocine, 1368 bottles of Codeine Syrup, 30 tablets of Diazepam, 216 injections of Buprenorphine and 580 tablets of Chlordiazepoxide were recovered in the search conducted at three premises of M/S G.M. Traders on 26-10-2021 and the applicant was arrested at 08:00 hours on 27-10-2021.

8. It has been stated in the counter affidavit that in his voluntary statement recorded under Section 67 of the NDPS Act, the applicant has admitted that he has resorted to illegal sale and stock of illicit NDPS medicines.

9. A copy of the complaint filed by the C.B.N. has been annexed with the supplementary counter affidavit in this Court in which the lists of recovered medicines have been mentioned. All the substances recovered during the raid were medicines manufactured by established manufacturing companies that had been purchased by the applicant and bills in respect of the same were shown to the officers of C.B.N., except Tramadol and Buprenorphine.

10. It has further been stated in the complaint that the statement of several persons were recorded during investigation from which it appeared that the medicines had been purchased by M/s G. M. Traders on proper bills as per the provisions of law in this regard.

11. Although numerous documents have been annexed with the copy of the complaint filed before this Court, a questionnaire issued by the Court of Special Judge, NDPS Act has been annexed with the supplementary counter affidavit, stating that no document has been filed by C.B.N. along with the complaint.

12. Section 2 of the NDPS Act defines narcotic drugs and manufactured drugs as follows: -

*"(xiv) "narcotic drug" means coca leaf, cannabis (hemp), opium, poppy straw and includes all manufactured drugs;*

*(xi) "manufactured drug" means-- all coca derivatives, medicinal cannabis, opium derivatives and poppy straw concentrate;*

*any other narcotic substance or preparation which the Central Government may, having regard to the available information as to its nature or to its nature or to a decision, if any, under any International Convention, by notification in the Official Gazette, declare to be a manufactured drug,*

*but does not include any narcotic substance or preparation which the Central Government may, having regard to the available information as to a decision, if any, under any International Convention, by notification in the Official Gazette, declare not to be a manufactured drug;*

13. Since NDPS is a Special Act providing stringent punishments for special offences, the first thing to be seen would be whether the provisions of the Act are applicable in the present case. For that, the CBN has to establish that the substances recovered were 'narcotic drugs'. Although the CBN has filed a supplementary counter affidavit running into 900 pages, no declaration issued by the Central Government under Section 2 (xi) of the Act has been placed on record.

14. One of the medicines recovered is Corex T Cough Syrup and it has been alleged in the counter affidavit that it contains Codeine and, therefore, it is a manufactured drug and hence it is a

narcotic drug. However, the composition of Corex T, or of any other medicine recovered, has not been placed on record.

15. Codeine is mentioned at Serial No. 132 of Schedule H appended to the Drugs and Cosmetics Rules, 1945, and, therefore, it is a drug.

16. On 14-11-1985 the Government of India had issued a notification No. 826(E) dated 14.11.1985 and S.O. 40(E) dated 29-01-1993 containing the list of narcotic drugs and Entry 35 thereof is as follows:--

*"Methyl morphine (commonly known as 'Codeine') and Ethyl morphine and their salts (including Dionine), all dilutions and preparations except those which are compounded with one or more other ingredients and containing not more than 100 milligrams of the drug per dosage unit and with a concentration of not more than 2.5% in undivided preparations and which have been established in Therapeutic practice."*

*(emphasis supplied)*

17. As per the aforesaid Notification, if any drug contains not more than 100 milligrams of Methyl Morphine, which is commonly known as Codeine, per dosage unit, and in that drug Codeine is compounded with one or more other ingredients and if in the drug the concentration of Codeine is not more than 2.5% in undivided preparations and the drug has been established in Therapeutic practice, will not be a "Manufactured Drug" and, therefore, it will not be a "Narcotic Drug". It is not the case of C.B.N. that Corex T Cough Syrup contains pure Codeine without compounding it with any other substance, or that the drug

concentration of Codeine in Corex T cough syrup exceeds 2.5%. Therefore, Corex T might not be a manufactured drug.

18. Similar is the case of other medicines and there is nothing on record to establish that those fall within the purview of the definition of "manufactured drugs" under the NDPS Act.

19. The other drugs recovered contain Tramadol Hydrochloride, which is mentioned at serial no. 507, Clonazepam, which is mentioned at serial no. 125, Chloradiazepoxide, which is mentioned at serial no. 105, Diazepam, which is mentioned at serial no. 147, Pentazocine which finds place at serial no. 392 of the Schedule H appended to the Drugs and Cosmetics Rules. Buprenorphine and Pentazocine is also contained in some of the drugs and those find place in Schedule H1 appended to the aforesaid Rules.

20. Sri. Krishna Agarwal has relied upon the following passage from the decision of the Hon'ble Supreme Court in **Mohd. Sahabuddin v. State of Assam**, (2012) 13 SCC 491, wherein the Hon'ble Supreme Court was deciding an appeal against an order passed by the High Court denying bail to a person accused of transporting huge quantity of some drugs without any documents: -

*"12. As pointed out by us earlier, since the appellants had no documents in their possession to disclose as to for what purpose such a huge quantity of Schedule H drug containing narcotic substance was being transported and that too stealthily, it cannot be simply presumed that such transportation was for therapeutic practice as mentioned in the Notifications dated 14-11-1985 and 29-1-1993. Therefore, if the*

*said requirement meant for therapeutic practice is not satisfied then in the event of the entire 100 ml content of the cough syrup containing the prohibited quantity of codeine phosphate is meant for human consumption, the same would certainly fall within the penal provisions of the NDPS Act calling for appropriate punishment to be inflicted upon the appellants. Therefore, the appellants' failure to establish the specific conditions required to be satisfied under the aboveresferred to notifications, the application of the exemption provided under the said notifications in order to consider the appellants' application for bail by the courts below does not arise.*

In Mohd. Sahabuddin, the drugs were being transported by the accused stealthily without any documents whereas in the present case the drugs had been purchased by M/s G. M. Traders, from various suppliers through valid invoices. Therefore, the aforesaid case is distinguishable on facts.

21. Moreover, the Notification dated 14-01-1985 uses the words "established in therapeutic practices" and not the words "for therapeutic practice". The phrase "for therapeutic practice" has been interpreted by a Division Bench of this Court in **Vibhor Rana versus Union of India**, 2021 SCC OnLine All 908, in the following manner: -

*"41. The expression "established in therapeutic practice" has not been interpreted in any previous decision. It is a basic rule of interpretation that the words used in the statute should be given their simple and natural meaning and neither any word should be added nor should any word be ignored while interpreting any provision. When the Government has used the expression "established in therapeutic*

*practice" these words cannot be altered so as to read it as "used for therapeutic purposes". The phrase "established in therapeutic practice" apparently means that the compound in question has been established to be a drug in accordance with the therapeutic practices followed for establishment of new drugs."*

22. In **Makhan Singh v. State of Haryana**, (2015) 12 SCC 247 while dealing with a case under the Narcotic Drugs and Psychotropic Substances Act, the Supreme Court reiterated that *"...It is a well-settled principle of the criminal jurisprudence that more stringent the punishment, the more heavy is the burden upon the prosecution to prove the offence."*

23. All the substances recovered are branded medicines manufactured by established manufacturing companies. The composition of none of the medicines has been placed on record to establish that these fall within the purview of "manufactured drugs" and the provisions of the Act are applicable to the recoveries made from the applicant.

24. If the substance recovered fall within the purview of the Act, the procedure laid down by the legislature in Section 52 A of the Act to be followed upon seizure of any narcotic drug or psychotropic substance regarding preparation of inventory, collection of samples, taking photographs etc. has to be followed. The CBN has not placed any material with the counter affidavit to indicate that the any empowered officer has made an application to any Magistrate for the purposes mentioned in Section 52 A and that the Magistrate has allowed the application. Therefore, at this stage, prima facie it appears that the procedure

prescribed in Section 52 A of the Act has not been followed in the present case.

25. In exercise of the powers conferred by Section 52 A (1) of the Act, the Government of India, Ministry of Finance (Department of Revenue) has issued a Standing Order No. 1/89 dated 13th June, 1989, laying down procedure for collection of samples etc. Section II of the Standing Order No. 1/89 reads as under:--

*"Section II General Procedure for Sampling, Storage, etc.*

2.1. *Sampling and classification, etc. of drugs. All drugs shall be properly classified carefully weighed and sampled on the spot of seizure.*

2.2. *Drawal of samples. All the packages/containers shall be serialy numbered and kept in lots for sampling. Samples from the narcotic drugs and psychotropic substances seized, shall be drawn on the spot of recovery, in duplicate, in the presence of search witnesses Panchas and the person from whose possession the drug is recovered, and a mention to this effect should invariably be made in the panchnama drawn on the spot.*

2.3. *Quantity to be drawn for the sampling.-- The quantity to be drawn in each sample for chemical test shall not be less than 5 grams in respect of all narcotic drugs and psychotropic substances, save in the cases of opium, ganja and charas (hashish) where a quantity of 24 grams in each case is required for chemical test. The same quantities shall be taken for the duplicate sample also. The seized drugs in the packages/containers shall be well mixed to make it homogeneous and*

*representative before the sample (in duplicate) is drawn.*

3.1. *Preparation of inventory.-- After sampling, detailed intentry of such packages/containers shall be prepared for being enclosed to the panchnama. Original wrappers shall also be preserved for evidentiary purposes.*

(Emphasis supplied)

26. In **Khet Singh v. Union of India**, (2002) 4 SCC 380, the Hon'ble Supreme Court held that: -

*"10. The instructions issued by the Narcotics Control Bureau, New Delhi are to be followed by the officer-in-charge of the investigation of the crimes coming within the purview of the NDPS Act, even though these instructions do not have the force of law. They are intended to guide the officers and to see that a fair procedure is adopted by the officer-in-charge of the investigation."*

27. In **Noor Aga v. State of Punjab**, (2008) 16 SCC 417, the Hon'ble Supreme Court held that: -

*"89. Guidelines issued should not only be substantially complied with, but also in a case involving penal proceedings, vis-à-vis a departmental proceeding, rigours of such guidelines may be insisted upon. Another important factor which must be borne in mind is as to whether such directions have been issued in terms of the provisions of the statute or not. When directions are issued by an authority having the legal sanction granted therefor, it becomes obligatory on the part of the subordinate authorities to comply therewith.*

90. Recently, this Court in **State of Kerala v. Kurian Abraham (P) Ltd.**

(2008) 3 SCC 582, following the earlier decision of this Court in *Union of India v. Azadi Bachao Andolan* (2004) 10 SCC 1, held that statutory instructions are mandatory in nature.

91. The logical corollary of these discussions is that the guidelines such as those present in the Standing Order cannot be blatantly flouted and substantial compliance therewith must be insisted upon for so that sanctity of physical evidence in such cases remains intact. Clearly, there has been no substantial compliance with these guidelines by the investigating authority which leads to drawing of an adverse inference against them to the effect that had such evidence been produced, the same would have gone against the prosecution."

28. In **Union of India v. Mohanlal**, (2016) 3 SCC 379, the Hon'ble Supreme Court held that: -

"12. Section 52-A(1) of the NDPS Act, 1985 empowers the Central Government to prescribe by a notification the procedure to be followed for seizure, storage and disposal of drugs and psychotropic substances. The Central Government has in exercise of that power issued Standing Order No. 1 of 1989 which prescribes the procedure to be followed while conducting seizure of the contraband. Two subsequent standing orders one dated 10-5-2007 and the other dated 16-1-2015 deal with disposal and destruction of seized contraband and do not alter or add to the earlier standing order that prescribes the procedure for conducting seizures. Para 2.2 of Standing Order No. 1 of 1989 states that samples must be taken from the seized contraband on the spot at the time of recovery itself....

\* \* \*

15. It is manifest from Section 52-A(2)(c) (*supra*) that upon seizure of the contraband the same has to be forwarded either to the officer-in-charge of the nearest police station or to the officer empowered under Section 53 who shall prepare an inventory as stipulated in the said provision and make an application to the Magistrate for purposes of (a) certifying the correctness of the inventory, (b) certifying photographs of such drugs or substances taken before the Magistrate as true, and (c) to draw representative samples in the presence of the Magistrate and certifying the correctness of the list of samples so drawn.

16. Sub-section (3) of Section 52-A requires that the Magistrate shall as soon as may be allow the application. This implies that no sooner the seizure is effected and the contraband forwarded to the officer-in-charge of the police station or the officer empowered, the officer concerned is in law duty-bound to approach the Magistrate for the purposes mentioned above including grant of permission to draw representative samples in his presence, which samples will then be enlisted and the correctness of the list of samples so drawn certified by the Magistrate. In other words, the process of drawing of samples has to be in the presence and under the supervision of the Magistrate and the entire exercise has to be certified by him to be correct.

\* \* \*

31. To sum up we direct as under:

31.1. No sooner the seizure of any narcotic drugs and psychotropic and controlled substances and conveyances is effected, the same shall be forwarded to the officer in charge of the nearest police station or to the officer empowered under Section 53 of the Act. The officer concerned shall then approach the Magistrate with an application under Section 52-A(2) of the

*Act, which shall be allowed by the Magistrate as soon as may be required under sub-section (3) of Section 52-A, as discussed by us in the body of this judgment under the heading "seizure and sampling". The sampling shall be done under the supervision of the Magistrate as discussed in Paras 15 to 19 of this order.*

31.2. *The Central Government and its agencies and so also the State Governments shall within six months from today take appropriate steps to set up storage facilities for the exclusive storage of seized narcotic drugs and psychotropic and controlled substances and conveyances duly equipped with vaults and double-locking system to prevent theft, pilferage or replacement of the seized drugs. The Central Government and the State Governments shall also designate an officer each for their respective storage facility and provide for other steps, measures as stipulated in Standing Order No. 1 of 1989 to ensure proper security against theft, pilferage or replacement of the seized drugs.*

31.3. *The Central Government and the State Governments shall be free to set up a storage facility for each district in the States and depending upon the extent of seizure and store required, one storage facility for more than one districts.*

31.4. *Disposal of the seized drugs currently lying in the Police Malkhanas and other places used for storage shall be carried out by the DDCs concerned in terms of the directions issued by us in the body of this judgment under the heading "disposal of drugs".*

29. However, there is nothing on record to indicate that an application was filed before the Magistrate seeking permission to draw representative samples in his presence, that the samples were actually drawn and the

correctness of the list of samples so drawn was certified by the Magistrate as mandated by the legislature in Section 52 A and as directed by the Hon'ble Supreme Court in Mohanlal (Supra).

30. In **State of Punjab v. Baldev Singh**, (1999) 6 SCC 172, the Hon'ble Supreme Court held that: -

*"Prosecution cannot be permitted to take advantage of its own wrong. Conducting a fair trial for those who are accused of a criminal offence is the cornerstone of our democratic society. A conviction resulting from an unfair trial is contrary to our concept of justice. Conducting a fair trial is both for the benefit of the society as well as for an accused and cannot be abandoned. While considering the aspect of fair trial, the nature of the evidence obtained and the nature of the safeguard violated are both relevant factors. Courts cannot allow admission of evidence against an accused, where the court is satisfied that the evidence had been obtained by a conduct of which the prosecution ought not to take advantage particularly when that conduct had caused prejudice to the accused."*

31. In **Tofan Singh v. State of T.N.**, (2021) 4 SCC 1, the Hon'ble Supreme Court reiterated that: -

*"55. Given the stringent provisions of the NDPS Act, together with the safeguards mentioned in the provisions discussed above, it is important to note that statutes like the NDPS Act have to be construed bearing in mind the fact that the severer the punishment, the greater the care taken to see that the safeguards provided in the statute are scrupulously followed."*

32. The principle that where the law prescribes a manner for doing a thing, the

thing has to be done in that manner or not at all, was propounded in **Taylor versus Taylor** (1875) 1 Ch D 475 and it was followed by the Privy Council in **Nazir Ahmad versus King Emperor**, AIR 1936 PC 253 and it has consistently been followed since then. What prima facie appears at this stage is that the procedure prescribed by Section 52 A of the Act and by the Standing Order No. 1 of 1989 issued by the Central Government and the guidelines issued by the Hon'ble Supreme Court in **Mohanlal** (Supra) have not been followed in the present case, which vitiates the prosecution.

33. It has further been held in Tofan Singh (Supra) that: -

*"158.1. That the officers who are invested with powers under Section 53 of the NDPS Act are "police officers" within the meaning of Section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of Section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.*

*158.2. That a statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act."*

Therefore, the confessional statements of the applicant cannot be used in the trial.

34. In **Union of India v. Rattan Mallik**, (2009) 2 SCC 624, the Hon'ble Supreme Court explained the principles applicable in grant of Bail in offences under the NDPS Act as follows:--

*"11. Section 37 of the NDPS Act, as substituted by Act 2 of 1989 with effect*

*from 29-5-1989 with further amendment by Act 9 of 2001 reads as follows:*

*"37. Offences to be cognizable and non-bailable.-*

*(1) Notwithstanding anything contained in the Criminal Procedure Code, 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 27-A 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 Page 11 of 15*

*(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 Criminal Procedure Code, 1973 (2 of 1974), or any other law for the time being in force on granting of bail."*

*It is plain from a bare reading of the non obstante clause in Section 37 of the NDPS Act and sub-section (2) thereof that the power to grant bail to a person accused of having committed offence under the NDPS Act is not only subject to the limitations imposed under Section 439 of the Criminal Procedure Code, 1973, it is also subject to the restrictions placed by clause (b) of sub-section (1) of Section 37 of the NDPS Act. Apart from giving an opportunity to the Public Prosecutor to oppose the application for such release, the*

*other twin conditions viz. (i) the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence; and (ii) that he is not likely to commit any offence while on bail, have to be satisfied. It is manifest that the conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty, has to be based on "reasonable grounds". The expression "reasonable grounds" has not been defined in the said Act but means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence he is charged with. The reasonable belief contemplated in turn, points to existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence (vide Union of India v. Shiv Shanker Kesari, (2007) 7 SCC 798). Thus, recording of satisfaction on both the aspects, noted above, is sine qua non for granting of bail under the NDPS Act.*

*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."*

(Emphasis supplied)

35. Analyzing the facts of the present case for the purpose of deciding the applicant's claim for bail in light of the aforesaid law, I find the following facts to be relevant for deciding the application for grant of bail to the applicant: -

(i) The drugs in question have been manufactured by established manufacturing companies and the same had been purchased by M/s G. M. traders from various suppliers with proper documentation;

(ii) The proprietor of M/s G. M. Traders Lakshman Prasad holds license to deal in the drugs recovered and the applicant being his younger brother, claims to have been looking after his business because of his illness;

(iii) The drugs in question are mentioned in Schedule H and Schedule H 1 appended to the Drugs and Cosmetics Rules and at this stage, there is nothing on record to even prima facie indicate that the same are narcotic drugs;

(iv) No material has been placed on record to indicate that the procedure prescribed in Section 52 A of the Act has been followed in the present case

(v) The confessional statement of the applicant is not admissible in evidence in view of the law laid down by the Hon'ble Supreme Court in Tofan Singh (Supra);

36. The aforesaid facts raise doubts against the prosecution case and it give rise to a reasonable ground for prima facie satisfaction at this stage that the applicant may not be held guilty of the alleged offences.

37. The applicant has no criminal history and, therefore, there is no ground to

believe that in case the applicant is released on bail, he would again indulge in committing similar offences.

38. Moreover, nothing has been placed on record which may give rise to a reasonable apprehension that in case the applicant is released on bail, he would influence the witnesses.

39. No other material has been placed by the respondent C.B.N., which may indicate that the applicant is not entitled to be released on bail.

40. In view the aforesaid discussion and without making any observations on merits of the case, I am of the view that the applicant is entitled to be released on bail pending conclusion of the trial. The bail application is accordingly allowed.

41. Let the applicant - **Pavan Kumar Agrawal**, be released on bail in C.B.N. Case Crime No. 04 of 2021, under Sections 21/22/25/28/30/35 of Narcotic Drugs and Psychotropic Substances Act, 1985, Police Station C.B.N. New Delhi, on his furnishing a personal bond and two reliable sureties each of the like amount to the satisfaction of the court concerned subject to following conditions:--

(i) The applicant will not tamper with the evidence during the trial.

(ii) The applicant will not influence any witness.

(iii) The applicant will appear before the trial court on the dates fixed, unless personal presence is exempted.

(iv) The applicant shall not directly or indirectly make inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court

to any police officer or tamper with the evidence.

42. In case of breach of any of the above conditions, the prosecution shall be at liberty to move an application before this Court seeking cancellation of bail.

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**(2022) 11 ILRA 917**

**REVISIONAL JURISDICTION**

**CRIMINAL SIDE**

**DATED: ALLAHABAD 11.10.2022**

**BEFORE**

**THE HON'BLE MRS. JYOTSNA SHARMA, J.**

Criminal Revision No. 743 of 2022

**Irfan Ahmad (Juvenile) ...Revisionist**  
**Versus**  
**State of U.P. & Anr. ...Opposite Parties**

**Counsel for the Revisionist:**

Sri Aftab Alam

**Counsel for the Opposite Parties:**

G.A.

**(A) Criminal Law - The Juvenile Justice (Care and Protection of Children) Act, 2015 - Section 102 - Revision, Indian Penal Code, 1860 - Sections 376, 504 & 506 - The Protection of Children From Sexual Offences Act, 2012 - Section 3/4, The Schedule Castes And The Schedule Tribes (Prevention of Atrocities ) Act , 1989 - Section 3(2)(v) - Revisional jurisdiction is only applicable in exceptional situations where the justice delivery system requires interference to correct manifest illegalities or prevent a gross miscarriage of justice - It is not an appellate forum for scrutinizing evidence or exercising the jurisdiction simply due to the factum of another view - in the event of justice failure, the Revisional power's applicability remains unaltered. (Para - 11)**