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**(2005) 09 AHC CK 0302**

**Allahabad High Court**

**Case No:** Criminal M. Bail Application No. 9184 of 2005

Alam

APPELLANT

Vs

State of U.P.

RESPONDENT

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**Date of Decision:** Sept. 28, 2005

**Acts Referred:**

- Constitution of India, 1950 - Article 20
- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 15, 37, 50, 8

**Citation:** (2005) 3 ACR 3216

**Hon'ble Judges:** Ravindra Singh, J

**Bench:** Single Bench

**Advocate:** S.P. Srivastava and H.P. Mishra, for the Appellant; A.G.A., for the Respondent

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**Judgement**

@JUDGMENTTAG-ORDER

Ravindra Singh, J.

Heard Sri Satya Prakash and Sri H. P. Mishra learned Counsel for the applicant and the learned A.G.A.

2. This application is filed by the applicant Alam with a prayer that he may be released on bail in Case Crime No. 508 of 2005, u/s 8/15, N.D.P.S. Act, P.S. Kotwali, district Moradabad.

3. From the perusal of the record it reveals that in the present case the F.I.R. was lodged by Sri T. P. Singh Yadav, S.H.O. of P.S. Kotwali on 11.4.2005 at 6.30 p.m. in respect of the incident which had occurred on 11.4.2005 at 5.00 p.m. The distance of the police station was about 1 km. from the alleged place of the occurrence.

4. According to prosecution version the applicant was arrested by the first informant and from his possession 1/2 kg. heroin was recovered, but co-accused Rajendra Singh successfully escaped from the place of occurrence. It is contended by the learned Counsel for the applicant that the first informant was having prior

information that the applicant was having heroin. There is no strict compliance of Section 50 of the N.D.P.S. Act and there is no public witness to support the prosecution story. The applicant is not involved in any case of N.D.P.S. Act.

5. It is opposed by the learned A.G.A. by submitting that in the present case the applicant was arrested by the first informant. He himself is a Gazetted Officer. The applicant disclosed that he was having the heroin. Thereafter, he was apprised about his right that he may give his search before any Magistrate or Gazetted Officer as provided by the Section 50 of the N.D.P.S. Act. Thereafter, the first informant gave a telephonic message to Circle Officer, Kotwali, Moradabad. On that information the Circle Officer came at the place of occurrence and in his presence search of the applicant was taken and from his possession 1/2 kg. heroin was recovered. From that recovered contraband Article 20 grams heroin was taken for sample. The same was sealed on the spot. The attempt was made to collect the public witness, but nobody was ready to give the evidence. It is further contended that in the present case the compliance of Section 50 of the N.D.P.S. Act has been made and the recovered heroin is above the commercial quantity, which may not be planted even no good ground of false implication has been shown by the applicant.

6. Considering the facts and circumstances of the case and submissions made by the learned Counsel for the applicant and learned A.G.A. and without expressing any opinion on the merits of the case the applicant is not entitled for bail at this stage.

7. Accordingly, the bail application is rejected.