

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 9162 of 2023

Applicant :- Sachin Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Prabhat Kumar Tiwari,Devi Dayal

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma,J.

1. Heard counsel for the applicant and learned A.G.A. for the State-opposite party.
2. The instant bail application, under Section 439 Cr.P.C., has been filed with a prayer to enlarge the applicant on bail in Case Crime No. 599 of 2023, under Sections 8/21/37 of the N.D.P.S. Act, Police Station- Hariparvat, District- Agra during the pendency of trial.
3. Counsel for the applicant submitted that the applicant has been falsely implicated in the instant case. False recovery of 550 gram alprazolam power has been shown from the possession of the applicant. There is no independent witness to the alleged recovery. The mandatory provisions of Sections 42 and 50 of N.D.P.S. Act have not been complied with. Further, the procedure of sampling prescribed in Rule 8, 9, 10 (1), 12 and 13 of the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022 have also been violated. The alleged sample was received in the office of the F.S.L. Agra on 17.12.2022. It is further contended that the inordinate delay in concluding the trial has led to virtually an indefinite imprisonment of the applicant without there being any credible evidence to implicate him in the offence and violates the rights of the applicant to a speedy trial. The applicant is in jail since 5.12.2022 having no criminal history and in case, he is enlarged on bail, he will not misuse the said liberty.
4. Learned A.G.A. has opposed the prayer for bail but could not satisfactorily dispute the aforesaid submissions from the record.
5. Having heard counsel for the parties and having perused the record I am of the prima facie view that mandate of Chapter V of the NDPS Act has not been followed. The sampling has not been done in the presence of Magistrate, which is required under

Section 52A of the NDPS Act. There is no independent witness to the recovery. Further, the procedure of sampling adopted is in violation of the Rule 8, 9, 10 (1), 12 and 13 of the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022. The applicant has no criminal antecedents and has remained confined for more than ten months and there is no hope of early conclusion of trial, more so when no reasonable apprehension has been brought to the fore by the State that the applicant, if enlarged on bail, would either tamper with the evidence or delay the trial or intimidate the witness, without commenting on merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

6. Let the applicant- **Sachin Kumar**, involved in the aforesaid case crime be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to the conditions that he:

- (i) shall appear on the date fixed by the trial court;
- (ii) shall not tamper with the prosecution evidence;
- (iii) shall not pressurize the prosecution witnesses.

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

Order Date :- 1.11.2023
SFH