

Court No. - 44

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12523 of 2023

Applicant :- Saddam

Opposite Party :- State of U.P.

Counsel for Applicant :- Ajay Kumar Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Pankaj Bhatia,J.

1. Rejoinder affidavit filed on behalf of applicant in the court today is taken on record.
2. Heard learned counsel for the applicant, learned AGA and perused the record.
3. The FIR in question was lodged, alleging that on being apprehension and search 115 gms. Alprazolam powder was allegedly recovered from the bag of the applicant. It is further recorded that the applicant had stated that he was ready and willing to search by a gazetted officer, the search was carried out by the police authorities. It is further recorded that out of the total quantity of 115 gms. alprazolam powder recovered from the applicant. 10 gms. sample was drawn and was sent for chemical analysis. In the light of the said averments, the counsel for the applicant argues that mandate of Section 50 was clearly violated the assertion. He further submits that search was allegedly carried out on 13.9.2022, but the sample was received by the laboratory after about fifteen days, i.e. on 27.9.2022, which is contrary to the standing order, which prescribed that the sample size should be 24 gms. and should be forwarded within 72 hours, which was not done in the present case as the sample contained is shown to be 10 gms. As recorded the criminal history, the same has been disclosed in the rejoinder affidavit, wherein the applicant was being tried for offence under N.D.P.S. Act and he has been enlarged on bail in the year 2021.
4. Learned AGA opposes the bail application by arguing that the recoveries were effected and the test of Section 37 of the NDPS Act has to be satisfied.
5. In the light of said, from the perusal of the FIR it becomes clear that the recovery was not affected in the presence of gazetted officer. It further transpires that there was no independent witness of the search as is also recorded in the FIR, thus recovery in the manner, in which it was affected is contrary to the mandate of Section 50, as well as section 100 Cr.P.C. The sample size prescribed in the standing orders is also not proper in the present case as 10 gms. sample was drawn. Thus, the

sending of the sample is not in terms of standing orders as there is no reason as to why the sample was sent for chemical analysis after a gap of fourteen days. In the light of the said discrepancies learned counsel for the applicant places strong reliance on the judgment of the Supreme Court in the case of ***Mohd Muslim @ Hussain v. State (NCT of Delhi); 2023 LiveLaw (SC) 260*** .

6. Prima facie, a view can be formed for all the said reasons, the prosecution may not be able to establish the guilt during trial and thus, the applicant should be enlarged on bail. Although the applicant has a history of an offence under N.D.P.S. Act, in which he is on bail. The fact remains that the recovery, in the reasons recorded herein above becomes suspect and thus the applicant is entitled to be enlarged on bail. In view thereof, the application is allowed.

7. Let the applicant Saddam be released on bail in FIR No. 8 of 2021, under Section 8/22 of NDPS Act, P.S. Tronica City, district-Ghaziabad on his furnishing a personal bond with two sureties of the like amount each to the satisfaction of court concerned with the following conditions:

(a) The applicant shall execute a bond to undertake to attend the hearings;

(b) The applicant shall not commit any offence similar to the offence of which he is accused or suspected of the commission; and

(c) The applicant shall not directly or indirectly make any 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 or to any police officer or tamper with the evidence.

Order Date :- 8.11.2023

Faridul