

**Court No. - 74**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 16273 of 2021

**Applicant :-** Sonu @ Anni Bauwa

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Balendra Kumar Singh, Istyak Khan

**Counsel for Opposite Party :-** G.A.

**Hon'ble Vivek Varma, J.**

1. Heard learned counsel for the applicant, Sri Prateek Tyagi, learned A.G.A. for the State and perused the record.
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. 46 of 2021, under Section 8/20 of N.D.P.S., Police Station- Chakeri, District- Kanpur Nagar during pendency of the trial.
3. Counsel for the applicant submits that the applicant has been falsely implicated in the instant case. False recovery 2.8 kg. Charas has been shown from a Bullet motorcycle, which does not belong to the applicant. There is no independent witness to the search, seizure and recovery memo. There is nothing on record to demonstrate 'conscious possession' of the applicant. The mandatory provisions of Sections 42, 50, 51 and 52-A of the N.D.P.S Act have not been followed. The applicant is in jail since 13.1.2021. The applicant is a law abiding citizen and has always cooperated with the investigation, and has attended the trial. The trial is moving at snail's pace and shows no sign of early conclusion. The applicant cannot be faulted for the delay in conclusion of trial. In the present case, the prosecution proposes to examine seven witnesses to bring home the charges. As per the status report sent by the trial court dated 12.10.2023 till date only three prosecution witnesses have been examined. Inordinate delay in concluding the trial has led to indefinite imprisonment of the applicant. The criminal history of the applicant has been explained in para 13 of the bail application. 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 the provisions of Sections

42, 50 and 51 of the NDPS Act have not been followed. There is no independent witness to the search, seizure and recovery memo. The procedure of sampling is in violation of Section 52-A of the N.D.P.S. Act. Inventory of the seized contraband was not duly certified by the Magistrate. The applicant is in jail for more than two years and ten months and out of seven prosecution witnesses only three has been examined so far. Even the prosecution could not bring on record any material, which would show that the trial has been delayed on account of any fault on the part of the present applicant. Thus, the 'right of speedy trial' of the applicant as enshrined under Article 21 of the Constitution of India is violated. Although the applicant is warranted in other cases under the NDPS Act, the fact remains that the applicant has remained in jail for considerable period of time and there is no compliance of mandate of Chapter V of the NDPS Act and as such there are reasonable grounds to believe that the applicant shall not indulge himself in other cases of similar nature.

6. Let the applicant, **Sonu @ Anni Bauwa** involved in the aforesaid case be released on bail on his furnishing a personal bond and two sureties each of the like amount to the satisfaction of court concerned on the following conditions that:

- i. the applicant shall not tamper with the prosecution evidence;
- ii. the applicant shall not pressurize the prosecution witness;
- iii. the applicant shall appear on each and every date fixed by the trial court.

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 :- 30.11.2023**  
S.S.