

**Court No. - 77**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 19774 of 2022

**Applicant :-** Aqil

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

**Counsel for Applicant :-** Salman Ahmad, Diwan Saifullah Khan, Kunwar Jitendra Bahadur Singh, Mohammad Fazil, Naseem Ahmad, Sanjay Kumar Mishra

**Counsel for Opposite Party :-** Ashish Pandey

**Hon'ble Mrs. Renu Agarwal, J.**

1. Learned counsel for the applicant is present.
2. It transpires from the previous order-sheets that no one is appearing on behalf of the N.C.B. Today also, when the case is taken up there is no representation on behalf of the N.C.B.
3. The present first bail application under Section 439 Cr.P.C. has been filed on behalf of the applicant in Case Crime No. 24 of 2021 under Sections 8/20, 29, 60(3) N.D.P.S. Act, Police Station N.C.B., District Lucknow with the prayer to enlarge him on bail.
4. Learned counsel for the accused-applicant submitted that the applicant is innocent and has been falsely implicated in the instant case due to malafide intentions. Allegation is of recovery of 150 Kg Ganja from the Scorpio Vehicle bearing Registration No. DL4CNB2721 which was driven by the applicant. It is submitted that mandatory provisions of Section 50 of the N.D.P.S. Act has not been complied with. There is no F.S.L. report on record. It is further submitted that two co-accused persons were taken into custody from the TATA Container while three

accused persons including the applicant were taken into custody from the Scorpio Vehicle. It is next contended that the applicant had no knowledge that the alleged Ganja was present in the said Scorpio vehicle. It is contended that co-accused-Mausim who was sitting in the same vehicle has been enlarged on bail by coordinate Bench of this Court vide order dated 24.03.2023 passed in Criminal Misc. Bail Application No. 12615 of 2022 and the case of the present applicant is not distinguished from that of co-accused. Applicant is languishing in jail since 20.06.2021 having no criminal history to his credit, hence, the applicant may be given the benefit of Section 37 of the N.D.P.S. Act and he may be granted liberty of bail and if he is granted the liberty of bail he will not misuse the same and he is ready to furnish his sufficient sureties, bonds and personal bonds and shall co-operate in the trial.

5. On the other hand, there is none to oppose the prayer for bail.

6. Considering the fact that the applicant is the driver of the said Scorpio vehicle and there is nothing on record to show that the applicant was in conscious possession of the recovered Ganja, there is no FSL report and there is no public witness of the alleged recovery, provisions of Section 50 NDPS Act has not been complied with, applicant has no criminal history apart from this case, hence, there are reasonable ground to believe that applicant shall not indulge himself in another case of like nature in compliance of Section 37(1)(b)(ii) of the NDPS Act, applicant is languishing in jail since 20.06.2021 and there is no apprehension of the evidence being tampered with and without expressing any opinion on the merits of the case,

accused-applicant is liable to be released on bail.

7. Let applicant **Aqil** be released on bail in the above case crime number and on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of Court concerned with the following conditions :-

(i) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(ii) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the court on the date fixed in such proclamation, then the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

(iv) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the

trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

(v) The applicant shall also furnish an undertaking from the sureties that the properties (movable/immovable) which are the basis of accepting the surety, shall not be disposed of by them till the conclusion of trial.

(vi) The applicant shall also give an undertaking to the effect that he will not change his address without prior intimation to the trial court concerned.

**(Renu Agarwal,J.)**

**Order Date :- 22.11.2023**

Karan