

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 16193 of 2023

Applicant :- Parvez

Opposite Party :- State of U.P.

Counsel for Applicant :- Anjali, Pramod Kumar Singh, Ravindra Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma, J.

1. Counsel for the applicant prays for and is permitted to correct the prayer clause of the instant application, during the course of the day.
2. Counter affidavit filed by the learned AGA, is taken on record.
3. Heard learned counsel for the applicant and Sri Neeraj Kumar Sharma, learned AGA for the State-respondent.
4. 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. 293 of 2022, under Sections 8, 20, 22, 25 of N.D.P.S. Act, Police Station- Sidhari, District Azamgarh, during the pendency of trial.
5. Counsel for the applicant submits that the applicant was not arrested at the spot. The applicant has been nominated as an accused in the first information report in pursuance of a statement of co-accused Surya Bhan Yadav before the police authorities. The said statement insofar as it implicates the applicant is unreliable. False recovery of forty nine bundles of ganja (total 124 Kg. 920 gram) was shown from the house of co-accused Rakesh Yadav @ Sonu Yadav. There is no independent witness to the alleged recovery. The mandatory provisions of Sections 42, 50, 51 of N.D.P.S. Act have not been complied with. Sample was taken from a single packet. It is next contended that the procedure of sampling adopted is in violation of the Standing Order/ Instruction No. 1 of 1989 dated 13.06.1989 issued by the Government of India under Section 52-A of the N.D.P.S. Act. The trial is moving at snail's pace and is not likely to conclude early. 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 speedy trial. It is next contended that identically placed co-accused Rakesh Yadav @ Sonu has been granted bail by this Court vide order dated 03.05.2023 passed in Criminal Misc. Bail Application No. 58445 of 2022. The applicant claims parity. The criminal history of the applicant has been explained in para 10 of the rejoinder affidavit. The applicant is in jail since 28.07.2022 and in case, he is enlarged on bail, he will not misuse the said liberty.
6. Learned AGA has opposed the prayer for bail but could not satisfactorily dispute the aforesaid submissions from the record.
7. Having heard counsel for the parties and having perused the record, I am of

the prima facie view that the mandate of Sections 42, 50, 51 and 52-A of N.D.P.S. Act has not been followed. There is no independent witness to the alleged recovery. Inventory of the seized contraband was not duly certified by the Magistrate. Sample was taken from a single packet and was sent to the Forensic Science Laboratory. Thus, the procedure of sampling adopted is in violation of the Standing Order/ Instruction No. 1 of 1989 dated 13.06.1989 issued by the Government of India under Section 52-A of the N.D.P.S. Act. Identically placed co-accused Rakesh Yadav @ Sonu Yadav has been granted bail by this Court. Apart from the instant case, the applicant is not involved in any case under the N.D.P.S. Act, as such there are reasonable grounds to believe that the applicant shall not indulge himself in other cases of similar nature. Further, the applicant has remained confined for more than one year and four months and 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 the merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

8. Let the applicant **Parvez** 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.

9. 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 :- 12.12.2023

Lbm/-