

Court No. - 72

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 17561 of 2023

Applicant :- Oladele Jomoh Urf Ola Okosis Ossy

Opposite Party :- State of U.P.

Counsel for Applicant :- Manish Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. List has been revised.
2. Heard learned counsel for the applicant as well as Sri S.P. Pandey, learned A.G.A. for the State and perused the material placed on record.
3. Applicant seeks bail in Case Crime No. 257 of 2022, U/S 8/20/21 of The Narcotic Drugs And Psychotropic Substances Act, 1985, Police Station- Knowledge Park, District- Gautam Buddha Nagar, during the pendency of trial.
4. As per prosecution story, the applicant and two other accused persons were arrested. From the possession of the applicant, 65 grams of Methamphetamine-MDMA was recovered, which was above the commercial quantity.
5. Learned counsel for the applicant has argued that the applicant is absolutely innocent and has been falsely implicated in the present case with a view to cause unnecessary harassment and to victimize him. Learned counsel has stated that there is no compliance of mandatory provision of Section 50 of the N.D.P.S. Act. It is next stated that since the applicant is the foreign national, he is being maliciously prosecuted by the police. It is next stated that the sample of the said contraband was sent for forensic examination, as such, the FSL report has been filed as CA-1 to the counter affidavit, which categorically indicates that it was found negative, as far as the drug Methamphetamine-MDMA is concerned. Rather it was found that the said drug was cocaine. Learned counsel has stated that if the said contraband was cocaine, then the recovery thereof is below commercial quantity, as the commercial quantity of cocaine is 100 grams. Learned counsel has stated that otherwise also, the applicant is entitled for bail.

6. Several other submissions have been made on behalf of the applicant to demonstrate the falsity of the allegations made against him. The circumstances which, as per counsel, led to the false implication of the applicant have also been touched upon at length. He has also stated that there is criminal history of three cases assigned to the applicant and he has been enlarged on bail in two cases i.e. Case Crime No. 258 of 2022 and 243 of 2022. The applicant is languishing in jail since 17.10.2022. In case, the applicant is released on bail, he will not misuse the liberty of bail. In case, the applicant is released on bail, he will not misuse the liberty of bail.

7. Learned A.G.A. has vehemently opposed the bail application but could not dispute the aforesaid submissions of learned counsel for the applicant.

8. In *Arif Khan @ Agha Khan v. State of Uttarakhand* (2018) 18 SCC 380, in which the Apex Court held that Section 50 of the NDPS Act mandatorily required search of the suspect/accused to be carried out in the presence of a magistrate or Gazetted officer, even if such a suspect/accused had waived the right to be taken to a magistrate or Gazetted Officer.

9. Upon hearing learned counsel for the parties, perusal of record and considering the complicity of accused, severity of punishment as well as totality of facts and circumstances, at this stage without commenting on the merits of the case, I find it a fit case for bail.

10. Let the applicant- **Oladele Jomoh Urf Ola Okosis Ossy**, who is involved in aforesaid case crime number 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 following conditions. Further, before issuing the release order, the sureties be verified.

(i) The applicant shall not leave India during the pendency of trial, without the prior permission of the concerned trial court.

(ii) The applicant shall surrender his passport, if any, to the concerned trial court. His passport will remain in custody of the concerned trial court.

(iii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the date 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.

(iv) 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 IPC.

(v) 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., may be issued and if 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 IPC.

(vi) The applicant shall remain present, in person, before the Trial Court on dates fixed for (1) opening of the case, (2) framing of charge and (3) 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.

11. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

12. It is made clear that observations made in granting bail to the applicant shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

(Justice Krishan Pahal)

Order Date :- 13.10.2023

Shalini