

Court No. - 76

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 20375 of 2023

Applicant :- Deepak Kumar Yadav

Opposite Party :- State of U.P.

Counsel for Applicant :- Rizwan Ahamad, Arvind Singh Patel, Ashutosh Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Vikram D. Chauhan, J.

1. Learned AGA for the State submits that instructions have been received in the case and the bail application may be heard. With the consent of learned counsel for the parties, the bail application is being heard at this stage.

2. Heard Sri Rizwan Ahmad and Sri Arvind Singh Patel, learned counsels for the applicant, learned AGA for the State and perused the record.

3. It is submitted by learned counsel for the applicant that as per the allegation in the F.I.R. one quintal 1 kg and 500 grams Ganja is alleged to be recovered from the Truck at a public place, thereafter, a sample of total 26 packets were recovered. Out of 26 packets, one packet was opened and 50-50 gram sample was prepared from the open packet and the same was sent to FSL laboratory. FSL report has come up for 50 gram analysis that the same contained Ganga. Learned counsel for the applicant submits that only from one packet the sample was taken and as such the same was below commercial quantity. The applicant is in jail since 03.12.2022. The alleged recovery is made on 02.12.2022. The recovery is from the joint possession with the co-accused, while the police personnel were checking the vehicle.

4. Learned counsel for the applicant submits that the applicant has been falsely implicated. There is no independent witness of the alleged recovery. The alleged recovery has not been made in accordance with law. The recovery (including search and seizure) is in violation of the N.D.P.S Act and Criminal Procedure Code. The said search and seizure has not been made by person authorised or empowered under law. The applicant cannot be permitted to remain in jail as a punitive measure during trial. There was no drug testing kit or others measures with the officials at the time of recovery which could identify

the alleged substance as a narcotic and psychotropic substance.

5. It is submitted that as per prosecution case, the abovementioned substance was recovered from vehicle while travelling/public place, however there is no independent witness. It is further submitted by counsel for the applicant that there is no criminal history of the applicant.

6. Learned AGA for the State has opposed the bail application, however does not dispute the fact that the sample was taken from one packet and the 50 gram sample was sent. It is further submitted that at the pre-trial stage, the innocence of applicant cannot be adjudged.

7. Learned AGA has not brought any fact or circumstances to indicate criminal history or antecedents of the applicant which would disentitle the applicant for Bail.

8. It is not the case of the State that the applicant has not cooperated in the investigation or proceedings before the trial court.

9. No material, facts or circumstances has been shown by learned AGA for the State that the accused may tamper with the evidence or witnesses or the accused is of such character that his mere presence at large would intimidate the witnesses or that accused will use his liberty to subvert justice or tamper with the evidence.

10. It is settled principle of law that the object of bail is to secure the attendance of the accused at the trial. No material particulars or circumstances suggestive of the applicant fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like have been shown by learned AGA for the State.

11. Learned AGA for the State has not shown any material or circumstances that the accused/applicant is not entitled to bail in larger interests of the public or State.

12. It is to be seen that in the present case, 26 packets of Ganja is alleged to have been recovered weighing about one quintal one kg and 500 grams. As per the prosecution case, from one packet 50-50 gram sample was prepared and sent for examination. The FSL report is filed along with the counter affidavit which pertains to examination of 50 gram of the alleged contraband substance. The entire seized contraband substance have not been sampled and sent to the Forensic Science Laboratory. The sample of portion of the seized substance which are in 26 different packets would not be itself indicate that all the packets seized contained contraband substance.

13. Considering the facts and circumstances of the case, nature of offence, evidence, complicity of the accused, submissions of learned counsel for the parties and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.

14. Let the applicant, **Deepak Kumar Yadav**, involved in Case Crime No. 550 of 2022, under section 8/20 N.D.P.S. Act, Police Station Tariya Sujan, District Kushinagar, be released on bail on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to the following conditions:-

- i. The applicant will not tamper with the evidence during the trial.
- ii. The applicant will not pressurize/intimidate the prosecution witness.
- iii. The applicant will appear before the trial court on the date fixed, unless personal presence is exempted and/or the applicant shall make himself available for interrogation by a police officer as and when required.
- iv. The applicant shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.
- v. 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.
- vi. The applicant shall not leave India without the previous permission of the Court.

vii. In the event, the applicant changes residential address, the applicant shall inform the court concerned about new residential address in writing.

15. In case of breach of any of the above condition, the prosecution shall be at liberty to move bail cancellation application before this Court.

Order Date :- 1.11.2023

K.K. Maurya