

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 18760 of 2023

Applicant :- Arun Kumar Chaubey And 2 Others

Opposite Party :- State of U.P.

Counsel for Applicant :- Matiur Rehman Khan, Indra Deo Mishra, Pankaj Kumar Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Sri I.D. Mishra, Advocate submits that day before yesterday he filed his power on behalf of the applicants in the office of this Court but his name is not shown in the cause list.

2. Heard Sri I.D. Mishra and Sri M.R. Khan, learned counsels for the applicants and Sri Suresh Bahadur Singh, learned AGA for the State.

3. The instant bail application has been filed seeking release of the applicants on bail in Case Crime No. 554 of 2022, under Sections 8/20 N.D.P.S. Act, Police Station Kotwali Padrauna, District Kushinagar during pendency of the trial.

4. Learned counsel for the applicants submitted that this is second bail application filed on behalf of the applicants. The first bail application of the applicants was dismissed by this Court vide order dated 12.01.2023 passed in Criminal Misc. Bail Application No. 52803 of 2022 and he is pressing the instant second bail application on the ground that as per allegation from the joint possession of applicants 40 Kgs. Ganja was recovered, which is although commercial quantity but applicants are in jail since 25.09.2022 and till date trial of the case could not be concluded. He further submits that at the time of first bail application, the point with regard to violation of Section 52-A of N.D.P.S. Act could not be argued and from the perusal of the recovery memo it reflects that sample was drawn at spot and it was not drawn before the Magistrate. He further submits that applicants are not having any previous criminal history of N.D.P.S. Act.

5. Per contra, learned AGA opposed the prayer for bail and

submitted that from the joint possession of applicants 40 Kgs. Ganja was recovered which is commercial quantity, therefore, first bail application of the applicant was dismissed but he could not dispute the fact that at the time of deciding first bail application the point with regard to violation of provision of Section 52-A of N.D.P.S. Act could not be placed and further applicants are not having any previous criminal history of N.D.P.S. Act and they are in jail since 25.09.2022 i.e. for more than a year.

6. I have heard learned counsel for the parties and perused the record of the case.

7. Although, this is second bail application filed on behalf of the applicants and first bail application of the applicants was dismissed by this Court vide order dated 12.01.2023 and it also reflects that from the joint possession of applicants 40 Kgs. Ganja was recovered, which is commercial quantity but it also reflects from the first bail order that at the time of passing it, the point with regard to violation of Section 52-A of N.D.P.S. Act could not be placed.

8. From the record, it reflects that sample has been drawn at spot and it has not been drawn before the Magistrate. The Apex Court in the cases of **Mangilal Vs. The State of U.P. 2023 SCC Online 862** and **Simarnjit Singh Vs. State of Punjab 2023 SCC OnLine SC 906** observed that if sample has been drawn at spot and not before the Magistrate then it is violation of mandatory provision of Section 52-A of N.D.P.S. Act and on this ground the recovery becomes doubtful.

9. Recently, the Apex Court in the case of **Yusuf @ Asif Vs. State 2023 SCC OnLine SC 1328** clearly observed that if there is violation of Section 52-A of N.D.P.S. Act then entire trial would vitiate. Further, applicants are not having any criminal history and in the present matter they are in jail since 25.09.2022 i.e. for more than a year.

10. Therefore, considering the facts and circumstances of the case discussed above, in my view, applicants are entitled to be released on bail.

11. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is **allowed**.

12. Let the applicants - **Arun Kumar Chaubey, Pankaj Kumar Rai** and **Munna Shah** be released on bail in the aforesaid case on

furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicants shall appear before the trial court on the dates fixed, unless their personal presence are exempted.

(ii) The applicants shall not directly or indirectly, make 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 any police officer or tamper with the evidence.

(iii) The applicants shall not indulge in any criminal and anti-social activity.

13. In case of breach of any of the above condition, the prosecution will be at liberty to move an application before this Court for cancellation of the bail of the applicants.

14. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial.

Order Date :- 17.10.2023

AK Pandey