

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 20247 of 2023

Applicant :- Pankaj Sharma

Opposite Party :- State of U.P.

Counsel for Applicant :- Ravi Kant Shukla, Priyanka Sharma, Vikrant Neeraj

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Heard Smt. Priyanka Sharma, learned counsel for the applicant and Sri Suresh Bahadur Singh, learned AGA for the State.

2. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 655 of 2022, under Sections 8/18 N.D.P.S. Act, Police Station Kasganj, District Kasganj during pendency of the trial.

3. Learned counsel for the applicant submitted that this is second bail application filed on behalf of the applicant. The first bail application of the applicant was dismissed by this Court vide order dated 13.01.2023 passed in Criminal Misc. Bail Application No. 54860 of 2022 and she is pressing the instant second bail application on the ground that after rejection of first bail application of the applicant, the bail application of three co-accused persons have already been allowed by this Court and from the possession of three accused persons also commercial quantity of Heroin was recovered. She further submits that their bail orders have been annexed as Annexure-3 to the affidavit filed in support of present bail application.

4. She further submits that from the perusal of the recovery memo, it appears that sample was drawn at spot and it was not drawn in the presence of Magistrate in view of Section 52-A of N.D.P.S. Act, therefore, it is violation of mandatory provision of Section 52-A of N.D.P.S. Act and this fact could not be placed at the time of hearing of first bail application. She placed the judgements of 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**. She further submits that applicant is in jail

since 01.10.2022 i.e. for more than one year.

5. Per contra, learned AGA opposed the prayer for bail but could not dispute the fact that at the time of rejection of first bail application the point of compliance of provisions of Section 52-A of N.D.P.S. Act could not be discussed and after rejection of first bail application of the applicant, three accused persons have been granted bail and even alleged quantity of Heroin, which was recovered from their possession, was more than the quantity recovered from the possession of applicant. He further could not dispute the fact that applicant is not having any previous criminal history.

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 applicant. The first bail application of the applicant was dismissed by this Court vide order dated 13.01.2023 passed in Criminal Misc. Bail Application No. 54860 of 2022 on merit and from the possession of the applicant, it appears that commercial quantity of the Heroin was recovered but it further reflects from the record that along with applicant three accused persons were also arrested and from their possession also commercial quantity of Heroin was recovered and all the three accused persons have been released on bail after rejection of first bail application of the applicant.

8. The Apex Court in the case of **Satender Kumar Antil Vs. Central Breau of Investigation and others MANU/SC/0851/2022** observed that all the accused persons should be treated equally and at the time of deciding the bail application, the Court should be conscious about Article 14 and 15 of the Constitution of India.

9. Further from perusal of the recovery memo, it appears that sample of the alleged contraband was drawn at spot and it was not drawn in presence of the Magistrate, therefore, it appears that there is violation of provisions of Section 52-A of N.D.P.S. Act.

10. The Apex Court in the cases of **Mangilal** (supra) and **Simarnjit Singh** (supra), reliance on which was placed by learned counsel for the applicant, categorically stated that if sample was not drawn in presence of the Magistrate then entire recovery would

become doubtful.

11. From perusal of the first bail application, it appears that this ground could not be argued before this Court while deciding the first bail application.

12. Further, applicant is not having any previous criminal history and in the present matter he is in jail since 01.10.2022 i.e. for more than a year.

13. Therefore, considering the facts and circumstances of the case discussed above, in my view, applicant is entitled to be released on bail.

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

15. Let the applicant - **Pankaj Sharma** 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 applicant shall appear before the trial court on the dates fixed, unless his personal presence is exempted.

(ii) The applicant 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 applicant shall not indulge in any criminal and anti-social activity.

16. 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 applicant.

17. 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 :- 13.10.2023

AK Pandey