

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 21876 of 2023

Applicant :- Ravi Yadav

Opposite Party :- State of U.P.

Counsel for Applicant :- Rakesh Kuamr Yadav, Satya Dheer Singh Jadaun

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Heard Sri Rakesh Kumar Yadav, learned counsel for the applicant and Sri Brajesh Pratap 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. 15 of 2023, under Sections 8/20/25 of N.D.P.S. Act, Police Station Oonj, District Bhadohi 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 28.03.2023 passed in Criminal Misc. Bail Application No. 12238 of 2023 on merit and he is pressing the instant second bail application on the ground that at the time of first bail application this fact could not be argued that there is violation of mandatory provisions of Section 52-A of N.D.P.S. Act and from perusal of recovery memo, it reflects that sample was drawn at spot and it was not drawn before the Magistrate concerned. He further submits that after rejection of first bail application of the applicant, the bail application of two other co-accused persons, who were also arrested along with applicant, have already been allowed by this Court.

4. He further submits that first bail application was dismissed on the ground that applicant is having criminal history of 11 cases and out of them one case was of N.D.P.S. Act. He further submits that earlier in the case of N.D.P.S. Act it was alleged that from the possession of applicant 1.3 Kgs. Ganja was recovered, which was not the commercial quantity. He further submits that even in the present matter from the joint possession of applicant and other accused persons 60 Kgs. Ganja was recovered and as other

accused persons have already been enlarged on bail, therefore, applicant should also be released on bail.

5. Per contra, learned AGA opposed the prayer for bail but could not dispute the fact that from the joint possession of applicant and other accused persons 60 Kgs. Gaja was recovered and after rejection of first bail application of the applicant, two co-accused persons, who were also arrested along with applicant, have been released on bail, however, he submitted that applicant is having criminal history of one case of N.D.P.S. Act but fairly conceded that in that case less than commercial quantity of Ganja was recovered from the possession of applicant. He further could not dispute the fact that at the time of first bail application ground of violation of Section 52-A of N.D.P.S. Act could not be taken.

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 28.03.2023 passed in Criminal Misc. Bail Application No. 12238 of 2023 on merit but from the first bail order, it appears that at the time of deciding the same ground of violation of Section 52-A of N.D.P.S. Act has not been taken. The Apex Court in case of **Simarnjit Singh Vs. State of Punjab 2023 SCC OnLine SC 906** held that violation of mandatory provisions of Section 52-A N.D.P.S. Act creates doubt upon the alleged recovery.

8. Further, along with applicant two other accused persons were also arrested and it is alleged that from the joint possession of applicant and other accused persons 60 Kgs. Ganja were recovered but after rejection of first bail application of the applicant, two co-accused persons, who were arrested along with applicant, have been released on bail.

9. The Apex Court in the case of **Satender Kumar Antil Vs. Central Bureau 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.

10. Therefore, considering the facts and circumstances of the case discussed above, in my view, applicant is 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 applicant - **Ravi Yadav** 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.

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 applicant.

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 :- 13.10.2023

AK Pandey