

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 21835 of 2023

Applicant :- Jakin Hussain

Opposite Party :- State of U.P.

Counsel for Applicant :- Rajesh Pratap Singh, Sr. Advocate

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Heard Sri Rajesh Pratap Singh, 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. 90 of 2022, under Sections 8/20 N.D.P.S. Act, Police Station Ciraiyakot, District Mau 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 04.01.2023 passed in Criminal Misc. Bail Application No. 45394 of 2022 and he is pressing the instant second bail application on the ground that applicant was the cleaner of the truck and subsequent to the rejection of the first bail application of the applicant, the driver of the truck has been released on bail by the co-ordinate Bench of this Court vide order dated 14.03.2023 passed in Criminal Misc. Bail Application No. 58467 of 2022 and his bail order has been annexed as Annexure 10 to the bail application.

4. He further submits that although as per allegation from the truck, in which, applicant was cleaner it is said that 6 quintal Ganja was recovered but as driver of the truck has already been released on bail, therefore, on the ground of parity applicant may also be enlarged on bail.

5. He further submits that applicant is not having any criminal history and in the present matter he is in jail since 23.05.2022 i.e. for more than a year. He placed reliance on the judgment of the Apex Court in the case of **Satender Kumar Antil Vs. Central Breau of Investigation and others MANU/SC/0851/2022** and argued in paragraph-73 it is observed that while deciding the bail application, the Courts

should also consider the fact that all the accused persons should be treated equally and while deciding the bail application, the Court should consider the provisions of Article 14 and 15 of the Constitution of India, therefore, considering the observation made by the Apex Court, applicant may also be enlarged on bail.

6. Per contra, learned AGA opposed the prayer for bail but could not dispute the fact that after rejection of first bail application of the applicant, the bail application of co-accused, who was driver of the truck, has been allowed by the co-ordinate Bench of this Court.

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

8. Although, this is second bail application filed on behalf of he applicant and his first bail application was dismissed by this Court on merit and as per allegation applicant was the cleaner of the truck and from the truck 6 quintal Ganja was recovered but it reflects from the record that after rejection of first bail application of the applicant, the driver of the truck has been released on bail by the co-ordinate Bench of this Court vide order dated 14.03.2023 passed in Criminal Misc. Bail Application No. 58467 of 202.

9. The Apex Court in the case of Satender Kumar Antil (supra) observed that all the accused persons should be treated equally, therefore, considering the observation made by the Apex Court in case of Satender Kumar Antil (supra), in my view, as driver of the truck has already been released on bail by the co-ordinate Bench of this Court and applicant is cleaner of the truck and he is not having any previous criminal history and he is in jail for more than a year, therefore, applicant is also entitled to be released on bail.

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

11. Let the applicant - **Jakin Hussain** 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.

12. 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.

13. 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 :- 31.10.2023

AK Pandey