

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 21902 of 2023

Applicant :- Bunty @ Ravi Shankar

Opposite Party :- State of U.P.

Counsel for Applicant :- Akash Tomar

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Supplementary affidavit filed today on behalf of the applicant is taken on record.
2. Heard Sri Akash Tomar, learned counsel for the applicant and Sri Imran Khan, learned AGA for the State-respondent.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 443 of 2022, under Sections 8/20 NDPS Act, Police Station- Sector-24, District- Gautam Budh Nagar, during pendency of the trial in the court below.
4. Learned counsel for the applicant submitted that this is the second bail application filed on behalf of the applicant and his first bail application was dismissed by this Bench on 24.02.2023 and he is pressing the instant second bail application on the ground that at the time of disposal of first bail application, this fact could not be disclosed that at the time of search and taking sample, mandatory provisions of Section 52-A NDPS Act have not been complied.
5. He further submitted that admittedly the sample was drawn at spot and not before the concerned Magistrate. He further submitted that as per the observation of the Apex Court in the case of ***Simarnjit Singh Vs. State of Punjab 2023 SCC OnLine SC 906***, if sample has been taken at spot then it creates doubt on the recovery alleged to have been made from the possession of the accused. He produced the judgment of *Simarnjit Singh(supra)* during the course of argument.
6. He further submitted that from the possession of applicant, it is alleged that 6.4 Kgs. ganja was recovered, which was below commercial quantity.

7. He further submitted that although, applicant was having criminal history of about 10 cases and out of 10 cases, he was having criminal history of only one case of NDPS Act and entire criminal history of the applicant has been explained in paragraph no. 32 of the instant bail application.

8. He further submitted that applicant is in jail since 08.11.2022 i.e. for almost a year.

9. Per contra, learned AGA opposed the prayer for bail and submitted that this is the second bail application filed on behalf of the applicant and his first bail application was dismissed by this Bench after considering the entire facts of the case but he fairly conceded that at the time of disposal of the first bail application, aspects of Section 52-A NDPS Act could not be discussed.

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

11. Although, this is the second bail application filed on behalf of the applicant and first bail application of the applicant was dismissed on merit by this Bench and from the perusal of the order dated 24.02.2023 passed by this Bench in the first bail application of the applicant, it appears that on the basis of criminal history of the applicant, his first bail application was dismissed, however, from the order dated 24.02.2023, it transpires that the argument with regard to any violation of Section 52-A NDPS Act could not be placed.

12. From the perusal of the record, it appears that the sample was taken at spot and it was not drawn before the Magistrate and the Apex Court in the case of ***Mangilal Vs. the State of U.P. 2023 SCC Online 862*** and ***Simarnjit Singh(supra)*** categorically observed that provisions of Section 52-A NDPS Act are mandatory and if samples are drawn at spot then it is a violation of provisions of Section 52-A NDPS Act and on the basis of violation of Section 52-A NDPS Act, entire alleged recovery becomes doubtful.

13. Further, from the possession of applicant 6.4 Kgs. ganja was recovered, which was not a commercial quantity and as far as criminal history of the applicant is concerned, out of total 10 cases, he was having criminal history of only one case of NDPS Act and entire criminal history of the applicant has been explained in paragraph no. 32 of the instant bail application.

14. Further, applicant is in jail since 08.11.2022 i.e. for almost a

year.

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

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

17. Let the applicant- **Bunty @ Ravi Shankar** 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.

18. 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.

19. 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 :- 12.10.2023

KK Patel