

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 31588 of 2020

Applicant :- Raj Kumar @ Raju Kushwaha

Opposite Party :- Union of India

Counsel for Applicant :- Pradeep Kumar, Padmaker Pandey, Raksha Chauhan, Upendra Kumar Singh

Counsel for Opposite Party :- Ashish Pandey

Hon'ble Vivek Varma, J.

1. Heard counsel for the applicant and Sri Ashish Pandey, counsel for the Narcotics Control Bureau.

2. The instant bail application, under Section 439 Cr.P.C., has been filed with a prayer to enlarge the applicant on bail in Case Crime No. 11 of 2019, under Sections 08/18 of the Narcotic Drugs and Psychotropic Substances Act, Police Station- Bindaki, District- Fatehpur during the pendency of trial.

3. Counsel for the applicant contends that the applicant was not arrested at the spot and has been falsely implicated in the instant case. The provisions of Sections 42, 50 and 57 of the N.D.P.S. Act have not been complied. There is no independent witness to the search, seizure and recovery memo. It is next contended that the applicant is in jail since 03.02.2020. The applicant is a law abiding citizen and has always cooperated with the investigation, and has attended the trial. The trial is moving at snail's pace and shows no sign of early conclusion. The applicant cannot be faulted for the delay in conclusion of trial. In the present case, the prosecution proposes to examine ten witnesses to bring home the charges. As per the status report dated 02.11.2023 sent by the trial court dated 02.11.2023, charges were framed against the applicant on 04.06.2022. The prosecution witnesses are not cooperating with the trial proceedings. Till date, no prosecution witness has been examined. Inordinate delay in concluding the trial has led to indefinite imprisonment of the applicant. The applicant does not have any criminal history. In case, he is enlarged on bail, he will not misuse the said liberty.

4. Counsel for the applicant has further placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of **Special Leave Petition (Crl.) No(s). 4169/2023 (Rabi Prakash vs. State of Odisha)**, in which the Hon'ble Supreme Court has held as follows;

"2. The prosecution case appears to be that the police party while on patrolling duty on 02.10.2019 at about 12.30 p.m. on Nandapur-Semiliguda road MDR-55, spotted one full body twelve wheeler Truck (Eicher) bearing No.EB-13-BD-5753 coming from Nandapur side at a high speed and accordingly they chased and detained the truck at Bodenga Chhak and found three persons boarded in the said truck including the driver. Eventually, 247 kg. Ganja was recovered from the truck. The petitioner was one of the occupants of the truck and was arrested at the spot. He has been in custody for more than three and a half years. There are no criminal antecedents against the petitioner.

3. We are informed that the trial has commenced but only 1 out of the 19 witnesses has been examined. The conclusion of trial will, thus, take some more time.

4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent – State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act."

5. Learned A.G.A. and counsel for the N.C.B. have opposed the prayer for bail but could not satisfactorily dispute the aforesaid submissions from the record.

6. Having heard counsel for the parties and having perused the record, I am of the prima facie view that the mandate of Chapter V of the N.D.P.S. Act has not been followed. Inventory of the seized contraband was not duly certified by the Magistrate. The applicant has no criminal antecedents. No doubt, the quantity of recovered contraband would fall in the 'commercial quantity' and the provision of Section 37 of the NDPS Act would be attracted in the present case. However, it is also borne out from the record that the applicant is in jail for more than three years and nine months and out of ten prosecution witnesses no one has been examined so far. The prosecution witnesses are not cooperating with the trial proceedings. Even the prosecution could not bring on record any material, which would show that the trial has been delayed on account of any fault on the part of the present applicant. Thus, the 'right of speedy trial' of the applicant as enshrined under Article 21 of the Constitution of India is violated and the conditions as mentioned in Section 37 of the NDPS Act can be dispensed with at this stage for the limited purpose of grant of concession of bail.

7. Consequently, keeping in view the above stated facts and the law laid down by the Hon'ble Supreme Court in [***Rabi Prakash vs. State of Odisha (supra)***], more so when no reasonable apprehension has been brought to the fore by the State that the applicant, if enlarged on bail, would either tamper with the evidence or delay the trial or intimidate the witness, without commenting on merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

8. Let the applicant **Raj Kumar @ Raju Kushwaha**, involved in the aforesaid case crime be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to the conditions that he:

- (i) shall appear on the date fixed by the trial court;
- (ii) shall not tamper with the prosecution evidence;
- (iii) shall not pressurize the prosecution witnesses.

9. In case of breach of any of the above conditions, the prosecution shall be at liberty to move bail cancellation application before this Court.

Order Date :- 23.11.2023
Sachin Mishra