Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 25750 of 2023

Applicant :- Ram Lal
Opposite Party :- State of U.P.
Counsel for Applicant :- Sarvajeet Singh
Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Sarvajeet Singh, learned counsel for the applicant and Sri Suresh Bahadur Singh, learned AGA for the State-respondent.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 529 of 2022, under Sections 8/18 NDPS Act, Police Station- Nawabganj, District- Bareilly, during pendency of the trial in the court below.

3. 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 on merit by this Court on 20.03.2023 but on the same date, bail application of Jodha Singh and Jatan Kashyap was allowed by another co-ordinate Bench of this Court vide order dated 20.03.2023 passed in Criminal Misc. Bail Application No. 11687 of 2023 and as per the allegation, from the joint possession of the applicant, co-accused Jodha Singh and Jatan Kashyap 3 Kg. opium was recovered. He further submitted that as on the same date, both the bail applications were disposed of, therefore, at the time of hearing of the first bail application of the applicant, this fact could not be placed before this Court that similarly placed two co-accused Jodha Singh and Jatan Kashyap have been granted bail by co-ordinate Bench of this Court. He further submitted that case of applicant is at par with co-accused Jodha Singh and Jatan Kashyap.

4. He further submitted that even from perusal of the recovery memo, it appears that sample was drawn from the spot and not before the Magistrate and this fact clearly suggests that there is violation of mandatory provisions of Section 52-A NDPS Act. He further submitted that this legal argument could not be placed before this Court earlier.

5. He further submitted that applicant is not having any criminal history and he is in jail since 11.12.2022 i.e. for almost a year.

6. 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 on merit by this Court after considering the fact that from the possession of the applicant and two others, 3 Kg. opium was recovered, which was commercial quantity but could not dispute the fact that first bail application of the applicant was dismissed on 20.03.2023 and on the same date, bail application of two other accused persons, who were also arrested alongwith the applicant, has been allowed by co-ordinate Bench of this Court and case of applicant is at par with him.

7. Learned AGA further could not dispute the fact that sample of the alleged recovered contraband was drawn at spot and not before the Magistrate and this fact also could not be placed by learned counsel for the applicant at the time of hearing of the first bail application. He further could not dispute the fact that applicant is not having any criminal history and he is in jail since 11.12.2022 i.e. for last almost a year.

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

9. However, this is the second bail application filed on behalf of the applicant and his first bail application was dismissed on merit by this Court on 20.03.2023 but it appears that on the same date, bail applications of other two accused persons Jodha Singh and Jatan Kashyap have been allowed by co-ordinate Bench of this Court and applicant and both these accused persons were alleged to have been arrested simultaneously and from their joint possession, as per the prosecution, 3 Kg. opium was recovered, therefore, it appears that case of applicant is at par with them.

10. Further, from perusal of the recovery memo, it appears that admittedly sample of the allege contraband was drawn at spot and not before the Magistrate, therefore, it appears to be violation of mandatory provisions of Section 52-A NDPS Act and this legal argument also could not be placed before this Court at the time of hearing of first bail application. The Apex Court in the case of ***Mangilal Vs. The State of U.P. 2023 SCC Online 862, Simranjit Singh Vs. State of Punjab 2023 SCC Online SC 906*** and ***Yusuf @ Asif Vs. State 2023 SCC Online SC 1328*** observed that provisions of Section 52-A NDPS Act are mandatory and if sample was

drawn at spot and not before the Magistrate then it creates doubt on the prosecution case and even on the basis of such non compliance of Section 52-A NDPS Act trial may also be vitiated.

11. Further, applicant is not having any criminal history and he is in jail since 11.12.2022 i.e. for almost a year.

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

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

14. Let the applicant- **Ram Lal** 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.

15. 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.

16. 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 :- 1.12.2023
KK Patel

Digitally signed by :-
KRISHN KANT PATEL
High Court of Judicature at Allahabad