

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 26793 of 2023

Applicant :- Abdul Majeed Alias Bachcha

Opposite Party :- State of U.P.

Counsel for Applicant :- Saurabh Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Saurabh Pandey, learned counsel for the applicant and Sri Ghanshyam Mishra, learned brief holder for the State-respondent.
2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 578 of 2022, under Section 8/21 NDPS Act, Police Station- Robertsganj, District- Sonbhadra, 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 he is pressing the instant second bail application on the ground that his first bail application was dismissed on the ground that he was having criminal history of two cases of NDPS Act but admittedly from the possession of the applicant, as per the prosecution, less than commercial quantity of heroin was recovered and in the present matter, applicant is in jail since 08.08.2022 i.e. for last more than a year.
4. He further submitted that from the recovery memo, it reflects that sample was drawn at spot and not before the Magistrate but this fact could not be placed before this Court at the time for hearing of the first bail application and now, law has been settled by the Apex Court that if there is non compliance of Section 52-A NDPS Act then even trial of the case may be vitiated. He placed reliance on the judgement of the Apex Court passed in the case of ***Yusuf @ Asif Vs. State 2023 SCC OnLine SC 1328.***
5. He further submitted that as far as criminal history of the applicant of two cases of NDPS Act is concerned, in both cases also applicant was falsely implicated by the police by showing non commercial quantity of the contraband and in both cases he has

been released on bail and his bail order has been annexed alongwith the instant bail application and, therefore, considering the facts and circumstances, argued above, applicant may be enlarged on bail.

6. Per contra, learned AGA opposed the prayer for bail and submitted that apart from the present case, applicant is also having criminal history of two cases of NDPS Act and after considering this fact, his first bail application was dismissed by this Court but he fairly conceded the fact that from the recovery memo, it reflects that sample was drawn at spot and not before the Magistrate and applicant is in jail in the present matter since 08.08.2022 and as per the allegation, from his possession 110 gm. heroin was recovered, which is not a commercial quantity. He also could not dispute the fact that in previous two other cases of NDPS Act also, non commercial quantity of contraband was recovered from the possession of the applicant and in both the cases, he is on bail.

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

8. 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 02.01.2023 but from the record, it reflects that from the possession of the applicant 110 gm. heroin was recovered, which is not a commercial quantity but from the perusal of the bail rejection order passed on the first bail application, it reflects that as applicant was having criminal history of two cases of NDPS Act, therefore, his first bail application was dismissed but in the present matter, applicant is in jail since 08.08.2022 i.e. for last more than a year.

9. Further, from the record, it reflects that at the time of hearing of the first bail application, the point with regard to non compliance of Section 52-A NDPS Act, could not be placed before this Court however, from record, it appears, sample of the contraband was drawn at spot and not before the Magistrate, therefore, there is non compliance of Section 52-A NDPS Act.

10. The Apex Court in the case of ***Mangilal Vs. The State of U.P. 2023 SCC Online 862*** observed that provisions of Section 52-A NDPS Act are mandatory in nature and in the case of ***Simarnjit Singh Vs. State of Punjab 2023 SCC OnLine SC 906***, the Apex Court observed that on non compliance of provisions of Section 52-A NDPS Act, entire recovery may become doubtful. Further, recently the Apex Court in the case of ***Yusuf @ Asif (supra)***

observed that even non compliance of Section 52-A NDPS Act, may vitiate the trial.

11. Further, however, from the record, it reflects that applicant is also having criminal history of two cases of NDPS Act but in both the cases, he has been released on bail and in both the cases, non commercial quantity of contraband was recovered from the possession of the applicant.

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- **Abdul Majeed Alias Bachcha** 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 :- 7.12.2023

KK Patel