

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 28303 of 2023

Applicant :- Gaurav Upadhaya

Opposite Party :- State of U.P.

Counsel for Applicant :- Mrityunjay Singh

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Mrityunjay Singh, learned counsel for the applicant and Dr. S.B. Maurya, learned AGA-I for the State.
2. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 657 of 2022, under Sections 21/22 of N.D.P.S. Act, Police Station Vrindawan, District Mathura 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 01.02.2023 passed in Criminal Misc. Bail Application No. 1243 of 2023 and he is pressing the instant second bail application on the ground that at the time of disposal of first bail application, he could not place some important facts of the case before this Court including the violation of Section 52-A of N.D.P.S. Act.
4. He further submits that from the recovery memo, it reflects that sample was drawn at spot and it was not drawn before the Magistrate. He placed the reliance on the judgments of the Apex Court in the cases of **Mangilal Vs. The State of U.P. 2023 SCC Online 862**, **Simarnjit Singh Vs. State of Punjab 2023 SCC OnLine SC 906** and **Yusuf @ Asif Vs. State 2023 SCC OnLine SC 1328**. He next submits that according to the Apex Court if there is violation of provisions of Section 52-A of N.D.P.S. Act then entire recovery become doubtful and even trial vitiates.
5. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since

27.11.2022 i.e. for more than ten months.

6. Per contra, learned AGA opposed the prayer for bail but could not dispute the fact that at the time of disposal of first bail application the point with regard to violation of Section 52-A of N.D.P.S. Act could not be placed before this Court. He further could not dispute the fact that applicant is not having any criminal history and in the present matter he is in jail since 27.11.2022 i.e. for more than ten months.

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 the applicant and his first bail application was dismissed by this Court on merit and from the possession of applicant 150 gram Alprazolam was recovered, which is commercial quantity but it appears from the recovery memo that at the time of recovery, sample was drawn at spot and it was not drawn before the Magistrate, therefore, it appears that there is violation of Section 52-A of N.D.P.S. Act.

9. The Apex Court in the cases of Mangilal, Simarnjit Singh and Yusuf @ Asif (supras) reliance of which was placed by learned counsel for the applicant categorically stated that compliance of Section 52-A of N.D.P.S. Act is mandatory in nature and its non compliance creates doubt on the alleged recovery and it also vitiates trial.

10. Further, applicant is not having any criminal history and in the present matter he is in jail since 27.11.2022 i.e. for more than ten months.

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

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

13. Let the applicant - **Gaurav Upadhaya** 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.

14. 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.

15. 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 :- 27.10.2023

AK Pandey