

Court No. - 75

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 34056 of 2022

Applicant :- Jahid @ Jadda

Opposite Party :- State of U.P.

Counsel for Applicant :- Garun Pal Singh, Abhilasha Singh, Ashutosh Yadav, Rajat Kumar Shukla, Shyam Lal

Counsel for Opposite Party :- G.A.

Hon'ble Umesh Chandra Sharma, J.

1. Heard Sri Ashutosh Yadav, learned counsel for the applicant, learned AGA for the State and perused the record.
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. 252 of 2022, under Section 21/22 N.D.P.S. Act, Police Station- Govind Nagar, District- Mathura during the pendency of trial.
3. Learned Counsel for the applicant submitted that no public witness has been taken by the police before the alleged recovery. The mandatory provision of Sections 50 and 52-A of the N.D.P.S. Act has not been complied with and except the confessional statement of the applicant, there is no iota of evidence. Neither the proper sampling has been conducted nor any attempt was made to take any public witness from the vicinity. Learned counsel for the applicant through the supplementary affidavit has explained the criminal antecedents against the applicant. Learned Counsel for the applicant has relied on the decision of the Apex Court case titled *Arif Khan @ Agha Khan v. State of Uttarakhand, 2018 LawSuit(SC) 420*, in which it has been laid down by the Apex Court that even if the accused gives his consent in writing to be searched by the police officials, it would be mandatory to make a

personal search before the Gazetted Officer/Magistrate. There is no criminal history against the applicant. The applicant is in jail since 24.06.2022. In case, he is enlarged on bail, he will not misuse the said liberty.

4. Learned AGA has opposed the prayer for bail but could not satisfactorily dispute the aforesaid submissions from the record.

5. Having regard to the submissions made but without commenting on merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

6. Let the applicant **Jahid @ Jadda**, 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.

(iv) shall appear continuously before the concerned S.H.O. on any day of his choice in the first week of every month till further order of the trial Court.

7. 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 :- 24.11.2023

Vijay