

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 29793 of 2023

Applicant :- Buntty

Opposite Party :- State of U.P.

Counsel for Applicant :- Sanjay Kumar Sharma

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Supplementary affidavit filed today on behalf of the applicant is taken on record.
2. Heard Sri Sanjay Kumar Sharma, learned counsel for the applicant and Sri Pradeep Kumar, learned AGA for the State.
3. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 635 of 2022, under Sections 8/21 N.D.P.S. Act, Police Station Katghar, District Moradabad during pendency of the trial.
4. 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 on merit vide order dated 12.01.2023 passed in Criminal Misc. Bail Application No. 52984 of 2022 and he is pressing the instant second bail application on the ground that unfortunately at the time of first bail application, the point that there is violation of Section 52-A of N.D.P.S. Act could not be placed before this Court.
5. He further submits that in view of the observation made by 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** the provision of Section 52-A of N.D.P.S. Act is mandatory and if sample was taken at the spot and not before the Magistrate then even trial can be vitiated and in the present matter as sample of the alleged contraband was drawn at spot and not before the Magistrate, therefore, on the ground of non compliance of Section 52-A of N.D.P.S. Act, the second bail application of the applicant may be entertained and applicant should be released on bail.

6. He further submits that even as per prosecution 34 ml Buprenorphine (Bupine) injection was recovered from the possession of applicant and 20 ml of Buprenorphine (Bupine) injection was the prescribed limit for commercial quantity, therefore, from the possession of the applicant only 14 ml more was recovered, therefore, at this stage precisely it cannot be said that from the possession of applicant commercial quantity of contraband was recovered. He further submits that however applicant is having criminal history of three cases of N.D.P.S. Act but in all the cases he was falsely implicated by the local police and he has explained the criminal history in the instant bail application.

7. He further submits that applicant in the present matter is in jail since 11.10.2022 i.e. for more than a year and till date only one prosecution witness could be examined on 06.03.2023 and since then more than six months have been passed but till date no other prosecution witness could be examined and this fact shows that trial of the case is moving with languid pace and there is violation of fundamental right of speedy trial of the applicant provided under Article 21 of the Constitution of India.

8. He placed reliance on the judgments of the Apex Court in the cases of **Mohd. Muslim alias Hussain Vs. State (NCT of Delhi) 2023 SCC OnLine SC 352** and submitted that Article 21 of the Constitution of India override the provision of Section 37 of N.D.P.S. Act and if there is violation of fundamental right of speedy trial of an accused then in the matter of N.D.P.S. Act, accused may also be released on bail. He further submits that therefore, considering the facts and circumstances of the case argued above, applicant should be enlarged on bail.

9. Per contra, learned AGA opposed the prayer for bail and submitted that applicant is also having previous criminal history of three cases of N.D.P.S. Act and from his possession commercial quantity of Buprenorphine (Bupine) injection was recovered and after considering the entire facts of the case, the first bail application of the applicant was dismissed but learned AGA could not dispute the fact the fact that at the time of first bail application the fact that sample was drawn at spot could not be considered. He further could not dispute the fact that applicant is in jail since 11.10.2022 i.e. for more than a year and till date only one prosecution witness could be examined and since than six months have been passed but till date no other prosecution witness could be examined by the trial court.

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

11. However, it appears that this is second bail application filed on behalf of the applicant and his first bail application was dismissed by this Court on merit vide order dated 12.01.2023 considering the fact that from his possession commercial quantity of Buprenorphine (Bupine) injection was recovered and he is also having previous criminal history of N.D.P.S. cases but from the order dated 12.01.2023 passed by this Court on the first bail application of the applicant, it appears that the fact that sample of the alleged recovered contraband was drawn by the searching officer at spot and not before the Magistrate could not be considered.

12. By several judgements of the Apex Court it has been settled now that provisions of Section 52-A of N.D.P.S. Act are mandatory in nature and even its violation can vitiate the trial. [See: **Mangilal, Simarnjit Singh and Yusuf @ Asif** (supra)]

13. Further, applicant in the present matter is in jail since 11.10.2022 i.e. for more than a year and it appears that till date only one prosecution witness could be examined and he was also examined on 06.03.2023 and since than more than six months have been passed but even PW-2 could not be examined, therefore, it appears that trial of the case is moving with languid pace.

14. The right of speedy trial is fundamental right of an accused and even its violation entitles the applicant to be released on bail even if he is facing trial under the provisions of N.D.P.S. Act. [See: **Union of India Vs. K.A. Najeed (2021) 3 SCC 713** and **Mohd. Muslim alias Hussain** (supra)].

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

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

17. Let the applicant - **Bunty** 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.

18. 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.

19. 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 :- 30.11.2023

AK Pandey