

Court No. - 44

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 29867 of 2023

Applicant :- Akhimala Gharti

Opposite Party :- State of U.P.

Counsel for Applicant :- Ganesh Shanker Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Pankaj Bhatia, J.

1. Heard learned counsel for the applicant as well as learned A.G.A. and perused the record.

2. In terms of the FIR, it was alleged that on 24.8.2022, three persons including the applicant were apprehended coming from Nepal. As regards the applicant, it was stated that she was carrying a packet of 4.720 Kgs. of Charas was kept in the said packet, which was weighed and thereafter, sample of 100 gms. was drawn out of the goods kept in the said packet and was sent for chemical analysis. The commercial analysis report has been filed along with the counter affidavit as CA-1 which records the weight of the sample 99 gms. and was sent for chemical analysis on 2.9.2022.

3. In the light of the said, the counsel for the applicant argues that prior to carrying of the search the mandate of Section 50 of the N.D.P.S. Act was not followed. It is further argued that the mandate of Section 100 Cr.P.C. was also not followed as there were no independent witnesses to the search, he argues that the sample drawn was 100 gms. was found to be 99 gms. in the report of the analysis and also argues that the samples were collected on 24.8.2023 and was sent on 2.9.2022 which was contrary to the notification No. 1 of 1989 which provides that the samples should be sent within 72 hours. It is lastly argued that applicant is a lady and has no criminal history of an offence under the N.D.P.S. Act.

4. Learned A.G.A. vehemently opposed the bail prayer and argues that the recovery is more than the commercial quantity and the test of Section 37 of the N.D.P.S. Act has to be satisfied.

5. Considering the submissions, on perusal of the FSL report, it is clear that the sample were received on 2.9.2022 without there being any explanation in the time spent from the date of recovery

i.e. 24.8.2022 up to 2.9.2022, thus, prima facie, contrary to the guidelines even in the Standing Order No. 1 of 1989. Quantity of the sample is also on variance, thus, on the basis of the report and the manner in which it has been recovered without there being independent witnesses, the prosecution may not be able to carry home the charge against the applicant. The applicant is a lady and has no criminal history, as such, the second test provided under Section 37 of the N.D.P.S. Act also stands satisfied, in the light of the law laid down in the case of **Ranjitsing Brahmajeetsing Sharma vs. State of Maharashtra & Anr. (2005) 5 SCC 294**, thus, the applicant who is custody since 25.8.2022 is enlarged on bail.

6. Accordingly, the bail application is allowed.

7. Let the applicant **Akhimala Gharti** be released on bail in FIR/ Case Crime No. 157 of 2022, under Sections 8/20/23 of N.D.P.S. Act, P.S. Dhebaura, District Siddharth Nagar on his furnishing personal bonds and two reliable local sureties of the like amount each, both the said sureties shall be Indians and shall be solvent sureties to the satisfaction of the court concerned with the following conditions:

(a) The applicant shall execute a bond to undertake to attend the hearings;

(b) The applicant shall not commit any offence similar to the offence of which he is accused or suspected of the commission; and

(c) The applicant shall not directly or indirectly make any 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 to any police officer or tamper with the evidence.

Order Date :- 6.11.2023

S.A.