

Court No. - 44

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 30197 of 2023

Applicant :- Laxmi Narayan Alias Luttan

Opposite Party :- State of U.P.

Counsel for Applicant :- Mayank

Counsel for Opposite Party :- G.A.

Hon'ble Pankaj Bhatia,J.

1. Heard learned counsel for the applicant, learned AGA and perused the record.
2. The accused-applicant seeks bail in Case Crime No.188 of 2023 under section 21/22 NDPS Act, and section 414 IPC and section 41/102 Cr.P.C., Police Station Highway, District Mathura.
3. The FIR in question was lodged alleging that the applicant was apprehended and on investigation one Kilogram twenty grams alprazolam powder was allegedly recovered from the applicant and the person. The FIR further records that the applicant was made aware of his rights of search before a gazetted officer, which he refuses to do so. The FIR further records that there are no independent witnesses to the said recovery also.
4. The submission of the counsel for the applicant is that the recovery, prima-facie, is contrary to the mandate of section 50 of the NDPS Act. He places reliance on the order passed by this Court in the case of ***Wahid Ali v. Narcotics Control Burear Lucknow*** decided in ***Criminal Misc. Bail Application No.13590 of 2021*** on ***12.07.2023*** and also places reliance on the judgment of the Hon'ble Supreme Court in the case of ***Mohd Muslim @ Hussain v. State (NCT of Delhi)***; ***2023 LiveLaw (SC) 260*** as well as in the case of ***Rabi Prakash v. The State of Odisha*** decided in ***Special Leave to Appeal (Crl.) No(s).4169 of 2023***.
5. The learned AGA, on the other hand, argues that in terms of the FSL report, on investigation, the powder was found to be alprazolam powder, thus, the applicant should not be enlarged on bail. He also argues that the applicant has the criminal history of four cases, which are pending against him, thus, the bail application should be rejected.
6. In rejoinder, the counsel for the applicant argues that none of the four cases against the applicant are under the NDPS Act and in all

the cases, the applicant is on bail.

7. Considering the submissions made at the bar, it is essential that the test of section 37 is satisfied before the bail can be granted. On the basis of the documents, prima facie, the recovery has not been effected in the presence of any gazetted officer or a magistrate or even before any independent witnesses, thus, the recovery is prima facie not in terms of the mandate of section 50 of the NDPS Act. On the basis of the allegations levelled and the search conducted, a reasonable view can be formed that the prosecution may not be able to establish the offence against the applicant in view of the law laid down in the case of ***Mohd Muslim (supra)*** and followed in the case of ***Wahid Ali (Supra)***.

8. As regards the second of the twin condition under section 37 of the Act, in view of the law laid down by this Court in ***Criminal Appeal No.523 of 2005 decided in the case of Ranjitsingh Brahmajeetsing Sharma vs. State of Maharashtra***, the second of the twin condition also is found to be satisfied. The applicant is in custody since 20.02.2023, as such, on the reasoning recorded herein-above, the applicant is entitled to be enlarged on bail. Thus, the bail application is allowed.

9. Let the applicant ***Laxmi Narayan Alias Luttan*** be released on bail in aforesaid first information report number subject to his furnishing a personal bond and two reliable sureties each of the like amount 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 :- 30.10.2023

VNP/-