

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 31922 of 2023

Applicant :- Mohit

Opposite Party :- State of U.P.

Counsel for Applicant :- Mukesh Joshi

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Mukesh Joshi, learned counsel for the applicant and Sri Pradeep Kumar, learned AGA for the State-respondent.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 1045 of 2022, under Sections 8 and 21 NDPS Act, Police Station- Civil Lines, District-Moradabad, during pendency of the trial in the court below.

3. Learned counsel for the applicant submitted that this is the second bail application filed on behalf of the applicant and his first bail application was dismissed by this Court on 09.02.2023 and he is pressing the instant second bail application on the ground that at the time hearing of first bail application, the point with regard to violation of Section 52-A of NDPS Act could not be placed before this Court.

4. He further submitted that as per the law laid down by the Apex Court in case of ***Mangilal Vs. The State of U.P. 2023 SCC Online 862***, the compliance of Section 52-A NDPS Act is necessary. He also placed reliance on the judgment of the Apex Court in case of ***Yusuf @ Asif*** passed in ***Criminal Appeal No. 3191 of 2023 (arising out of SLP (Crl.) No. 3010 of 2023)*** and submitted that even non compliance of Section 52-A NDPS Act can vitiate the entire trial.

5. He further submitted that applicant is not having any previous criminal history of NDPS Act and he is in jail since 14.12.2022 i.e. for last almost a year, therefore, he may be released on bail.

6. Per contra, learned AGA opposed the prayer for bail and submitted that as from possession of the applicant commercial quantity of injections of Diazepam and Burenorphine were

recovered, therefore, his first bail application was dismissed but could not dispute the fact that at the time of deciding of first bail application, the point with regard to violation of Section 52-A NDPS Act, could not be discussed. He further could not dispute the fact that from the recovery memo, it reflects that sample was drawn at spot and not before the Magistrate.

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

8. However, this is the second bail application filed on behalf of the applicant and his first bail application was dismissed on merit but from the record, it reflects that sample was drawn at spot by the Searching Officer and it was not drawn before the Magistrate, therefore, it appears that there is violation of Section 52-A NDPS Act.

9. As per the law laid down by the Apex Court in case of ***Mangilal (supra)***, the provisions of Section 52-A NDPS Act are mandatory and even as per the observation made by the Apex Court in case of ***Yusuf @ Asif (supra)***, even non compliance of Section 52-A NDPS Act can vitiate entire trial.

10. Further, applicant is not having any previous criminal history of NDPS Act and he is in jail since December, 2022 i.e. for last almost a year.

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- **Mohit** 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 :- 28.11.2023

KK Patel