

Court No. - 76

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 30575 of 2023

Applicant :- Nadeem @ Pappan

Opposite Party :- State of U.P.

Counsel for Applicant :- Anil Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Vikram D. Chauhan, J.

1. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.
2. The present bail application has been preferred with the prayer to release the applicant on bail in Case Crime No.383 of 2022, under Section 21/22 of Narcotic Drugs and Psychotropic Substances Act, 1985, Police Station Kasganj, District Kasganj.
3. It is submitted by learned counsel for the applicant that 600 gram of Diazepam is alleged to have been recovered from the possession of the applicant. The aforesaid recovered contraband substance is above commercial quantity. The provisions of Section 50 of N.D.P.S. Act has not been complied with. There is no independent witness of the alleged recovery. The criminal history of the applicant has been explained in paragraph 3 of the supplementary affidavit.
4. Learned A.G.A. opposed the prayer for bail. He submits that FSL report has been received in which the recovered substance has been found to be Diazepam. The recovered contraband substance is above commercial quantity. The provisions of Section 50 of the N.D.P.S. Act were complied with as a consent letter was given by the applicant for search by the police party. In this respect, necessary averment has been made in paragraph 9 of the counter affidavit.
5. In the present case, it is to be seen that 600 gram of Diazepam is alleged to have been recovered from the applicant. The same is supported by the FSL report, which has confirmed the recovered contraband substance to be Diazepam. The only argument raised on behalf of the applicant is that the provisions of Section 50 has not been complied with. In this regard, learned A.G.A. submits that

the consent letter has been signed by the applicant for search being made by the police party. The averment in this respect has been made in paragraph 9 of the counter affidavit. Such averment has not been denied by the applicant by filing any rejoinder affidavit nor such denial has been shown.

6. Learned counsel for the applicant submitted that there is no independent witness of the alleged recovery. The recovery of the contraband substance from the possession of the applicant by the police party itself is a substantive evidence as possession of the contraband substance is a criminal offence under the N.D.P.S. Act. The FSL report has confirmed that the recovered substance is contraband substance as per the N.D.P.S. Act. The recovered contraband substance is above commercial quantity.

7. It is not the case of learned counsel for the applicant that the police personnels were enmical with the applicant and as such have falsely implicated the applicant. No such averment has been made in the bail application against the police personnel who have caught the applicant with the contraband substance.

8. Under Section 37 of the N.D.P.S. Act the mandate has been issued by the legislature that person who has been prosecuted for having possessed the commercial quantity of contraband substance has to show reasonable ground for believing that the accused person is not guilty of such offence. In the present case, no such material facts and circumstances have been shown by learned counsel for the applicant to indicate that the applicant is not guilty of the offence.

9. The case of false implication has been raised by learned counsel for the applicant and in this respect, pleadings have been stated in paragraph 8 of the affidavit filed in support of the bail application, which is quoted hereinbelow:-

"8. That it is also pertinent to mention here that none has been recovered from the possession of the applicant but the police of concern police station has falsely implicated the applicant in the present case showing a false recovery of 600 grams intoxicate powder diazepam from the possession of the applicant, as such, allegation mentioned against the applicant is totally false and concocted, hence the offence Under Section 21/22 Narcotic Drugs and Psychotropic Substances Act, 1985 is not made out against the applicant."

10. The plea of false implication is wholly vague in nature.

11. A plea of false implication has been raised by the applicant. A plea of false implication is required to be specific and factual

foundation of the same is required to be laid down by accused in the pleadings. In **Ruli Ram Vs. State of Haryana, (2002) 7 SCC 691**, it has been observed by the Supreme Court that when a plea of false implication is advanced by the accused, foundation for the same has to be established. Further, in **Ram Udgar Singh Vs. State of Bihar, (2004) 10 SCC 443**, the Apex Court has held that foundation has to be laid if a plea of false implication is made. Vague allegations with regard to plea of false implication raised by accused is not permissible under law. The plea of false implication cannot be on the basis of conjectures. In **Brahm Swaroop Vs. State of U.P., (2011) 6 SCC 288**, Supreme Court has observed that a party has to lay down a factual foundation and prove by leading impeccable evidence in respect of its false implication. In the present case vague and general allegations have been made with regard to plea of false implication. The foundational fact and material particulars are absent. Such plea of false implication is not tenable.

12. Considering the facts and circumstances of the case and the reasoning given hereinabove, the present bail application lacks merit and as such is dismissed.

Order Date :- 16.11.2023
Bhaskar