

Court No. - 76

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 36452 of 2022

Applicant :- Shailendra Soni Alias Sheelu

Opposite Party :- State of U.P.

Counsel for Applicant :- Sanjay Srivastava, Rajesh Singh

Counsel for Opposite Party :- G.A.

Hon'ble Vikram D. Chauhan, J.

1. Learned A.G.A. for the State submits that instructions have been received and has no objection in case the bail application is heard on merits.

2. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.

3. It is submitted by learned counsel for the applicant that from applicant 9 Kg of Charas is alleged to have been recovered from the possession of applicant by the police personnel. It is submitted that provisions of Section 50 of N.D.P.S. Act has not been complied with. The search has not been made by the Gazetted Officer. It is further submitted that applicant has been falsely implicated in the present case. The applicant is running a jewellery shop and the local police has demanded illegal money from the applicant. Necessary pleadings in this respect has been made in paragraph no.9 of the affidavit. The applicant has no previous criminal history. Applicant is languishing in jail since 25.4.2022 and in case he is released on bail, he will not misuse the liberty of bail and will cooperate in the trial.

4. Learned A.G.A. for the State opposed the prayer for bail and submits that as per first information report, Circle Officer was present at the time of recovery, who was the Gazetted Officer and as such, provisions of Section 50 of N.D.P.S. Act has been complied with. He further submits that the allegation of false implication are vague.

5. It is to be seen in the present case that commercial quantity of 9 Kg of Charas is alleged to have been recovered and the same has been confirmed by the Forensic Science Laboratory report, which is filed along with the counter affidavit. The provisions of Section

50 of N.D.P.S. Act has been complied with, as the recovery has been made in the presence of Gazetted Officer. It is further to be noted that plea of false implication has been made in the present case, however, only vague allegations have been made in paragraph no.9 of the affidavit and no specification as to the date of demand of illegal gratification and the person who has demanded the amount has been stated.

6. 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.

7. Considering the facts and circumstances of the case, nature of offence, evidence, complicity of accused, submissions of learned counsel for the parties, the Court does not find it a fit case to release the applicant on bail.

8. Accordingly, the bail application of applicant-**Shailendra Soni Alias Sheelu** involved in Case Crime No.264 of 2022, under Sections 8/20/22/23/25/60 of N.D.P.S. Act, Police Station Barra, District Kanpur Nagar, is **rejected**.

Order Date :- 22.11.2023

D. Tamang