

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 32211 of 2023

Applicant :- Prem Lal

Opposite Party :- State of U.P.

Counsel for Applicant :- Virendra Kumar Maurya

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Virendra Kumar Maurya, learned counsel for the applicant and Sri Pradeep Kumar, learned AGA for the State.
2. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 510 of 2022, under Sections 8/21 N.D.P.S. Act, Police Station Loni Border, District Ghaziabad during pendency of the trial.
3. Learned counsel for the applicant submitted that this is second bail application filed on behalf of the applicant. The first bail application of the applicant was dismissed by this Court on merit vide order dated 17.03.2023 passed in Criminal Misc. Bail Application No. 40549 of 2022 and he is pressing the instant second bail application on the ground that at the time of first bail application, he could not place the argument that there is violation of mandatory provision of Section 52-A of N.D.P.S. Act and sample was drawn at spot and it was not drawn before the Magistrate.
4. He placed reliance on the judgments of the Apex Court in the cases of **Mangilal Vs. The State of U.P. 2023 SCC Online 862**, **Simarnjit Singh Vs. State of Punjab 2023 SCC OnLine SC 906** and **Yusuf @ Asif Vs. State 2023 SCC OnLine SC 1328**. He further submits that as in view of the Apex Court if there is violation of mandatory provision of Section 52-A of N.D.P.S. Act then trial will be vitiated, therefore, this ground can be considered in the instant second bail application.
5. He further submits that although as per allegation 120 grams Alprazolam powder was recovered from the possession of the applicant, which is commercial quantity as it was more than 100 gram but as it is only 20 grams more than the minimum quantity of 100 grams, therefore, possibility at this stage, cannot be ruled out that alleged quantity was even less than commercial quantity.

6. He further submits that although applicant was having previous criminal history of two cases of N.D.P.S. Act but both the cases relates to below commercial quantity and in both the cases applicant has already been released on bail. He further submits that in the present matter applicant is in jail since 23.07.2022 i.e. for more than a year.

7. Per contra, learned AGA opposed the prayer for bail and submits that after considering the entire facts of the case, the first bail application of the applicant was rejected by this Court but could not dispute the fact that argument with regard to violation of Section 52-A of N.D.P.S. Act could not be placed at the time of first bail application. He further could not dispute the fact that from the record, it reflects that sample was drawn at spot and it was not drawn before the Magistrate.

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

9. However, this is second bail application filed on behalf of the applicant and first bail application of the applicant has been dismissed by this Court but from the perusal of the first bail order of the applicant, it appears that at the time of passing the same the ground that there was violation of Section 52-A of N.D.P.S. Act has not been taken and from the record it reflects that sample was drawn at spot and it was not drawn before the Magistrate.

10. The Apex Court in the cases of **Mangilal, Simarnjit Singh and Yusuf @ Asif** (supras) observed that Section 52-A of N.D.P.S. Act is the mandatory and its violation not only creates doubt but also vitiates the trial. Further, it appears that from the possession of the applicant commercial quantity of Alprazolam Powder was recovered but from the possession of applicant, it appears that only 20 grams more than prescribed minimum quantity of 100 grams was recovered.

11. Further, however it also reflects that applicant was having previous criminal history of two cases but his criminal history has been explained in the instant bail application and it reflects that on the basis of below commercial quantity, he has been made accused and he is in jail since 23.07.2022 i.e. for more than a year.

12. The Apex Court in the case of **Mohd. Muslim alias Hussain Vs. State (NCT of Delhi) 2023 SCC OnLine SC 352** observed that if applicant is in jail for considerable period of time and there is delay in trial then bail application can be considered.

13. Therefore, considering the facts and circumstances of the case discussed above, in my view, applicant is entitled to be released on bail.

14. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is **allowed**.

15. Let the applicant - **Prem Lal** 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.

16. 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.

17. 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 :- 7.11.2023

AK Pandey