

Court No. - 44

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 31538 of 2023

Applicant :- Pappu Mishra @ Brijbhushan Mishra

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Aditya Kumar Rai, Pawan Kumar Srivastava

Counsel for Opposite Party :- G.A., Ashish Pandey

Hon'ble Pankaj Bhatia, J.

1. Heard Sri Siyaram Verma along with Sri Pawan Kumar Srivastava for the applicant and Sri Ashish Pandey who appears for the opposite party no. 2-NCB.
2. The present bail application has been filed by the applicant alleging that in terms of the complaint lodged against five persons under Sections 8, 20, 25 and 29 of the N.D.P.S. Act, the proceedings were initiated against them.
3. He draws my attention to the complaint filed by the NCB before the concerned court which records that on the basis of a search carried out on two vehicles namely **UP 42 AK 8055 and GJ 06 AZ 1983** allegedly over the 450 Kgs. of Ganja was recovered from the said persons who were sitting in the vehicle. It was also further recorded that the statement of the one of the co accused Dileep Verma was recorded by the NCB, who in a statement stated that the recovered Ganja was to be delivered to the applicant. Based upon the said statement, initially the complaint was filed against five persons and not against the applicant on 7.1.2022. Subsequently, the applicant was summoned to give statement under section 67 N.D.P.S. Act and based upon the said confessional statement, the supplementary complaint was also filed against the applicant after arresting the applicant. In the supplementary complaint filed against the applicant which is on record along with the counter affidavit, it was stated that while giving the statement under section 67 N.D.P.S. Act, the applicant had given a confessional statement agreeing to the effect that for purchasing the Ganja in question, he talked on WhatsApp and based upon the said statement, the applicant was arrested and was

linked with the recovery of 450 Kgs. of Ganja.

4. In the light of the said two complaints, the counsel for the applicant argues that apart from the statement of the co-accused recorded under 67 of the N.D.P.S. Act and the confessional statement of the applicant also recorded under 67 of the N.D.P.S. Act, no material exists in either of the complaints so as to link the applicant with the offence in question. He, thus, argues that the applicant has been falsely implicated with the offence in question and should be enlarged on bail.

5. As regards the criminal antecedents, the counsel for the applicant argues that applicant is being tried under two cases, the first being case crime no. 90 of 2020, under Sections 8/20/22 of the N.D.P.S. Act and the other being case crime no. 223 of 2022, under Section 3(1) of the Gangsters Act. In both the said cases, the applicant has been enlarged on bail.

6. Sri Ashish Pandey, counsel appearing for the opposite party no. 2-NCB, on the other hand, argues that after the recovery was affected from the five persons, the applicant was summoned, however, the summons could not be affected on the applicant for a reasonably long time. Subsequently, the applicant came for giving voluntary statement under section 67 of the N.D.P.S. Act and thereafter, after his recording the statement, he was apprehended and a supplementary complaint was filed against the applicant also.

7. The counsel for the applicant draws my attention to the para 21 of the supplementary complaint filed, wherein, it was stated that evidence came to the knowledge of the NCB that Sri Ganesh Road Lines whose proprietor Sri Vinod Yadav received a substantial amount of money and thereafter, a large amount of withdrawal from the said accounts and statement was given by the two co-accused that they used to deposit the money in the account of the applicant, which according to the applicant was an additional evidence to implicate the applicant. He argues that the bail application of the other co-accused have been rejected by this court through various orders. He, thus, argues that applicant has criminal history of one case under N.D.P.S. Act, the second part of the twin condition cannot be said to be satisfied.

8. The counsel for the applicant in rejoinder to the argument argues that the rejection of the bail of co-accused would not have any bearing on the case of the applicant as the co-accused were the

persons from whom the actual recovery was effected and no recovery was effected from the applicant. He also placed his reliance on the judgement of the Supreme Court in the case of **Tofan Singh v State of Tamilnadu 2020 SCC OnLine 88**.

9. Considering the statements made at the bar, prima facie, apart from the statements of the co-accused under section 67 of the N.D.P.S. Act and the alleged confessional statement of the applicant under section 67 of the N.D.P.S. Act, there is no iota of evidence whatsoever against the applicant which is clear from the supplementary complaint filed against the applicant. It is well settled that the confessional statement under section 67 of the N.D.P.S. Act is not admissible in evidence. In view of the law as explained in the case of **Tofan Singh (supra)**. In the present case apart from the said statement, there is no material against the applicant, there is no investigation or evidence by the NCB with regard to the statements made by the co-accused in the present case apart from the said statement there is no material against the applicant, there is no investigation or evidence by the NCB with regard to the statements made by the co-accused that certain deposits were made by them in the account of applicant. Thus, even the statements of the co-accused are not corroborated by any material as disclosed in the supplementary complaint. In view of the said, the first test satisfied under section 37 of the N.D.P.S. Act stands substantiated in view of the law as explained in the case of **Mohd Muslim @ Hussain vs State (NCT of Delhi); 2023 LiveLaw (SC) 260**.

10. As regards the second of the twin conditions prescribed under section 37 of the N.D.P.S. Act, although the applicant is warranted in the other case under N.D.P.S. Act, however, the fact remains that in the present case there is no material apart from the confessional statements to implicate the applicant with the offence in question, thus, the second of the twin test prescribed under section 37 of the N.D.P.S. Act also stands satisfied in favour of the applicant.

11. Accordingly, the bail application is allowed.

12. Let the applicant- **Pappu Mishra @ Brijbhushan Mishra** be released on bail in Complaint Case No.32 of 2021, under Sections 8/20 & 29 N.D.P.S. Act, Police Station- N.C.B., Lucknow, and P.S. Kotwali Robertsganj, District- Sonbhadra on his furnishing personal bonds and two reliable sureties of Rs.2,00,000/- each 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.

(d) The applicant shall Inform his address on the first day of every month to the Intelligence Officer of NCB, whose number shall be given to the applicant by the Intelligence Officer of the NCB.

(e) The applicant shall cooperate with the trial and shall not try to influence the witnesses.

13. It is provided that violation of any of the conditions would lead to a case for cancellation of bail.

Order Date :- 3.11.2023

S.A.