

Court No. - 44

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 33914 of 2023

Applicant :- Anil Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Manish Tandon, Mohd. Naushad Siddiqui, Prateek Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Pankaj Bhatia, J.

1. Heard learned counsel for the applicant as well as learned A.G.A. and perused the record.
2. In terms of the FIR in question, on the basis of the information received a truck bearing DCM container RJ 32 GC 2799 was apprehended. It is stated that the applicant was driving the truck in question. After apprehension a search was carried out, certain arms including one countrymade pistol and certain amount of moneys were also recovered and on a search being carried out further in a cavity kept in the truck, 240 packets of contraband Ganja were recovered. It is further recorded that each of the packet weighed around 2 Kgs. and 22 gms., thus, in total 4 quintals 85 Kg. and 280 gm. of Ganja was being transported in a cavity.
3. It was further recorded that from each of the said packets 50 gms. of Ganja was recovered and was sent for chemical analysis. The total Ganja of sample was mentioned as 1 Kg. 550 gms.
4. The counsel for the applicant argues that the recovery was not done in the presence of a Gazetted Officer and the recovery started before the Gazetted Officer had arrived at the spot which is contrary to the Section 50 of the N.D.P.S. Act. He further argues that the manner in which samples were drawn is also contrary to the standing order No. 1 of 1989 which requires drawing of the sample from each of the said packet allegedly recovered. He further argues that in the report sent by the agency to which the samples were sent, it was recorded that the samples sent were not seized properly and the same was returned to the authorities to resend the samples. The said report was sent on 14.2.2023 (contained in page 46). He argues that in the counter affidavit, it has been stated that after discrepancies were found in the sample

sent, no further report has been obtained with regard to the goods nor is clear from the next sample was sent. He, thus, argues that the recovery, the sampling and the chemical analysis report to not establish the offence in question against the applicant who was simply a driver and could not be connected with the offence in question. He argues that the applicant has no criminal history of an offence under N.D.P.S. Act.

4. Learned A.G.A., on the other hand, vehemently opposed the bail prayer arguing that the goods being transported were above the commercial, quantity, as such, the bail application should be rejected.

5. Considering the submissions made at the bar, prima facie, the recovery was done in the presence of a Gazetter Officer, although, his signatures are not on record which in itself raises suspicion with regard to the recovery, the sampling is clearly contrary to the guidelines contained in Standing Order No. 1 of 1989 even in terms of report of the chemical analysis, the samples were not found to be sealed properly and were directed to be resend and there is no material in the counter affidavit to suggest that the samples were resend or any fresh report came against the applicant. As such, prima facie, recovery in the sampling becomes suspected, although, the same would not be a ground for vitiating the trial. The material is enough to form a view that the recovery which suspicious may not lead the prosecution to establish its case itself in view of the law as explained in the case of **Mohd Muslim @ Hussain vs State (NCT of Delhi); 2023 LiveLaw (SC) 260** as the applicant has no criminal antecedents, in view of the law laid down in the case of **Ranjitsing Brahmajeetsing Sharma vs. State of Maharashtra & Anr. (2005) 5 SCC 294**, the second of the twin test also stands satisfied, as such, the applicant who is in custody since 6.2.2023 is enlarged on bail.

6. Accordingly, the bail application is allowed.

7. Let the applicant **Anil Kumar** be released on bail in FIR/ Case Crime No. 48 of 2023, under Sections 307 IPC & 8/20/27A/29 of the N.D.P.S. Act & 3/25 of Arms Act, P.S. Lalauli, District Fatehpur, on his furnishing personal bonds and two reliable sureties of the like amount 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.

Order Date :- 6.11.2023

S.A.