

Court No. - 44

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 33851 of 2023

Applicant :- Vipin

Opposite Party :- State of U.P.

Counsel for Applicant :- Awadhesh Kumar Mishra, Ajay Singh Yadav, Sanjay Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Pankaj Bhatia, J.

1. Heard Sri Awadhesh Kumar Mishra assisted by Sri Ajay Singh Yadav, learned counsel for the applicant as well as learned A.G.A. and perused the record.
2. The FIR in question was lodged alleging that on the basis of a search carried out of a vehicle Tata Sumo allegedly three bags were seized each weighing 18 Kgs. and the contraband kept in each of the bag was Ganja. Based upon the said recovery, three accused were apprehended including the applicant.
3. Counsel for the applicant argues that from all the co-accused 18Kgs. each total 54 Kgs. was allegedly recovered. He next argues that the recovery is not in terms of the mandate of Section 50 and there no independent witnesses to the said recovery, thus, the entire recovery become suspected. He further argues that the applicant has no criminal history and he is in jail since 29.06.2023.
4. Counter affidavit has been filed by the State admitting that a search carried out which resulted into recovery of illegal Ganja from the three co-accused which cannot be planted by the police authorities. It is also stated that the recovery was in accordance with law.
5. Learned A.G.A. vehemently opposed the bail prayer.
6. Considering the submissions made at the bar and on perusal of the FIR, it is revealed that on 29.06.2023, in a police party search, three persons were found and were apprehended along with 54 Kgs. of Ganja kept in three different bags each weighing 18 Kgs.

The FIR itself records that there are no independent witnesses to the search, there is no reference that search was carried out in presence of a Gazetted Officer or a Magistrate, thus, prima facie, even as per the FIR, there are no independent witnesses to the search. Even otherwise, the recovery of 54 Kgs. of Ganja in the form of three bags each weighing 18 Kgs. is said to have been recovered from three persons, thus, recovery from each of the said persons can be said to be less than the commercial quantity which 20 Kgs. even if the entire recovery is attributed to all the three persons jointly, prima facie, there is no independent witness to the sampling and thus, prosecution may not be able to establish the charge against the accused. As such, the first test of Section 37 of N.D.P.S. Act stands satisfied. In view of the law laid down in the case of **Mohd Muslim @ Hussain vs State (NCT of Delhi); 2023 LiveLaw (SC) 260**. As the applicant has no criminal history, the second of the twin test of Section 37 of N.D.P.S. Act also stands satisfied, as such, the applicant who is in custody since 29.06.2023, is entitled to be enlarged on bail.

7. Accordingly, the bail application is allowed.

8. Let the applicant **Vipin** be released on bail in FIR/ Case Crime No. 379 of 2023, under Section 8/20, 60(3) N.D.P.S. Act, P.S. Tilamod, District Ghaziabad, on his furnishing personal bonds and two reliable sureties each of the like amount 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 :- 30.10.2023

S.A.