

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 34332 of 2023

Applicant :- Bhagwati Prasad Gupta @ Rinku Gupta @ Rinku Jadugar

Opposite Party :- State of U.P.

Counsel for Applicant :- Suresh Chandra

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Suresh Chandra, 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. 42 of 2023, under Sections 21/22 N.D.P.S. Act, Police Station Sadabad, District Hathras 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 06.04.2023 passed in Criminal Misc. Bail Application No. 12948 of 2023 and he is pressing the instant second bail application on the ground that applicant is in jail since 01.02.2023 i.e. for more than nine months.

4. He further submits that at the time of alleged recovery mandatory provision of Section 52-A of N.D.P.S. Act have not been complied with and sample was drawn at spot and it was not drawn before the Magistrate and this fact could not be placed at the time of first bail application, therefore, considering the facts and circumstances of the case, applicant should be enlarged on bail.

5. Per contra, learned AGA opposed the prayer for bail and submitted that from the possession of applicant 1 kg. Diazepam Powder was recovered, which is commercial quantity and after considering the entire facts of the case, the first bail application of the applicant was dismissed but could not dispute the fact that at the time of first bail application, the point with regard to violation of Section 52-A of N.D.P.S. Act could not be placed before this

Court.

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

7. However, this is second bail application filed on behalf of the applicant and his first bail application was dismissed by this Court on merit but it appears that at the time of first bail application, this fact could not be taken into account that sample was drawn at spot and it was not drawn before the Magistrate, therefore, prima facie it appears to be violation of mandatory provisions of Section 52-A of N.D.P.S. Act.

8. 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** observed that if there is violation of mandatory provision of Section 52-A of N.D.P.S. Act then entire recovery becomes doubtful and in the case of Yusuf @ Asif (supra) further observed that on its violation even trial would vitiate.

9. Therefore, considering the facts that prima facie there appears to be violation of Section 52-A of N.D.P.S. Act and applicant is in jail since 01.02.2023 i.e. for more than nine months, in my view, applicant is entitled to be released on bail.

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

11. Let the applicant - **Bhagwati Prasad Gupta @ Rinku Gupta @ Rinku Jadugar** 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.

12. 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.

13. 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 :- 8.11.2023

AK Pandey