

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 40933 of 2022

Applicant :- Sadab

Opposite Party :- State of U.P.

Counsel for Applicant :- Rajeev Kumar Saini, Mohd. Arshad

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma, J.

1. Second supplementary affidavit, filed by the counsel for the applicant, is taken on record.
2. Heard learned counsel for the applicant, Sri V.P. Tripathi, learned A.G.A. for the State and perused the record.
3. The instant bail application, under Section 439 Cr.P.C., has been filed with a prayer to enlarge the applicant on bail in Case Crime No.526 of 2022, under Sections 8/21 of N.D.P.S. Act, Police Station- Murad Nagar, District- Ghaziabad during pendency of the trial.
4. Counsel for the applicant submits that the applicant has been falsely implicated in the instant case. False recovery of 220 grams alprazolam powder has been shown from the applicant. There is no independent witness to the search, seizure and recovery memo. The mandatory provisions of sections 42, 50, 55, 57 of N.D.P.S. Act have not been complied with. While weighing the alleged contraband, the police has weighed it along with packing material. No accurate scientific instruments were used for weightment. It is next contended that the applicant is in jail since 23.8.2022. The applicant is a law abiding citizen and has always cooperated with the investigation, and has attended the trial. The trial is moving at snail's pace and shows no sign of early conclusion. The applicant cannot be faulted for the delay in conclusion of trial. In the present case, the prosecution proposes to examine five witnesses to bring home the charges. The charges against the applicant were framed against the applicant on 28.3.2023. The prosecution witnesses are not cooperating with the trial proceedings. Till date no prosecution witness has been examined. Inordinate delay in concluding the trial has led to indefinite imprisonment of the applicant. The criminal history of the applicant has been explained in para 2 of the first supplementary affidavit. In all the cases the applicant is on bail. In case, he is enlarged on bail, he will not misuse the said

liberty.

5. Learned A.G.A. has opposed the prayer for bail but could not satisfactorily dispute the aforesaid submissions from the record.

6. Having heard counsel for the parties and having perused the record, I am of the prima facie view that the mandate of Chapter V and Section 52-A of the N.D.P.S. Act have not been followed. Inventory of the seized contraband was not duly certified by the Magistrate. No doubt, the quantity of recovered contraband would fall in the 'commercial quantity' and the provision of Section 37 of the NDPS Act would be attracted in the present case. However, it is also borne out from the record that the applicant is in jail for almost one year and three months and out of five prosecution witnesses no one has been examined so far. Even the prosecution could not bring on record any material, which would show that the trial has been delayed on account of any fault on the part of the present applicant. Thus, the 'right of speedy trial' of the applicant as enshrined under Article 21 of the Constitution of India is violated and the conditions as mentioned in Section 37 of the NDPS Act can be dispensed with at this stage for the limited purpose of grant of concession of bail. More so when no reasonable apprehension has been brought to the fore by the State that the applicant, if enlarged on bail, would either tamper with the evidence or delay the trial or intimidate the witness, without commenting on merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

7. Let the applicant **Sadab**, involved in the aforesaid case crime be released on bail on his furnishing a personal bond and two **heavy** sureties each in the like amount to the satisfaction of the court concerned subject to the conditions that he:

(i) shall appear on the date fixed by the trial court;

(ii) shall not tamper with the prosecution evidence;

(iii) shall not pressurize the prosecution witnesses.

8. In case of breach of any of the above conditions, the prosecution shall be at liberty to move bail cancellation application before this Court.

Order Date :- 23.11.2023

S.S.