

Court No. - 44

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 35938 of 2023

Applicant :- Geetam

Opposite Party :- State of U.P.

Counsel for Applicant :- Vijay Kumar Pandey

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. Rejoinder-affidavit filed today is taken on record.
3. The FIR in question was lodged alleging that on 14.7.2023 on the basis of a search carried out on the body of the applicant, diazepam powder being 650 gram was recovered from the possession of the applicant. The said powder was diazepam powder out of which 50 gram was drawn as sample.
4. Learned Counsel for the applicant argued that although F.I.R. records that the recovery was made in the presence of Gazetted Officer, the signature of gazetted officer was not present which is contrary to the mandate of Cr.P.C. and was adequately dealt with by this Court in the case of Wahid Ali Vs. Narcotics Control Bureau, Lucknow, Criminal Misc. Bail Application No.13590 of 2021, decided on 12.7.2023. It is further argued that when the recovery itself is suspicious, the entire proceedings are liable to be shown not proceeded with.
5. As regards the criminal antecedent is concerned, the applicant has criminal history of one case of NDPS in which he has been enlarged on bail.
6. Learned A.G.A. opposed the bail application by arguing that the recovery of both the articles is of commercial quantity and is duly supported by the forensic report.
7. Learned Counsel for the applicant argued that even in terms of the forensic report the sample found was 49.8 gram whereas the sample drawn was said to be 50 gram. In any case, the recovery was found from the person although the gazetted officer is said to be present, the recovery memo does not bear the signature, as such, it can be presumed that the recovery was contrary to the mandate of Section 50 of NDPS Act for the purpose of deciding the present bail application, thus, on that ground alone, this Court is of the view that the applicant may not suffer on the basis of recovery which is prima facie contrary to Section 50 of the NDPS Act, as such, the applicant is entitled to be released on bail.

8. Considering the submissions made at the Bar, *prima facie*, the signatures of the Gazetted Officer are not present which aspect was dealt with by this Court in the case of **Wahid Ali Vs. Narcotics Control Bureau, Lucknow; Criminal Misc. Bail Application No.13590 of 2021, decided on 12.07.2023** and held to be, *prima facie*, contradictory to Section 100 Cr.P.C. As recovery becomes suspicious and contradictory to the mandate of Section 50 of NDPS Act, in view of the law laid down in the case of **Muhamd Muslim @ Hussain Vs. State (NCT of Delhi); 2023 LiveLaw (SC) 260**, *prima facie*, a view can be formed that the prosecution may not be able to establish the offence; and, as the applicant has no criminal antecedent under the NDPS Act, in view of the law laid down in the case of **Ranjitsing Brahmajetsing Sharma Vs. State of Maharashtra and another, (2005) 5 SCC 294**, the second test also stands satisfied. In view thereof, the applicant is entitled to be enlarged on bail.

9. Accordingly, the bail application is **allowed**.

10. Let the applicant **Geetam** be released on bail in Case Crime No.194 of 2023, under Sections 21/22 of the NDPS Act, Police Station Chandau, District Aligarh 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

Irshad