

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 35373 of 2023

Applicant :- Raja Rayeen

Opposite Party :- State of U.P.

Counsel for Applicant :- Chandra Shekhar Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma,J.

1. Learned AGA for the State submits that the instructions have been received and he has no objection in case the bail application is decided on merits.

2. Heard learned counsel for the applicant and Sri Vinod Kumar Tiwari, learned AGA for the State-opposite party.

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. 187 of 2023, under Section 8/20 N.D.P.S. Act and Sections 420, 467, 468, 471 IPC, Police Station-Robertsganj, District Sonbhadra, during the pendency of trial.

4. Counsel for the applicant submits that the applicant has been falsely implicated in the instant case. False recovery of 139 Kg. ganja (27 bundles) has been shown from a pick-up vehicle, which was driven by co-accused Mohd. Bablu Farooqui. The applicant was a passenger in the alleged vehicle. There is no independent witness to the alleged recovery. There is nothing on record to demonstrate 'conscious possession' of the applicant. The mandatory provisions of Sections 42, 50 and 51 of N.D.P.S. Act have not been complied with. The procedure of sampling is in violation of the provision conferred under the N.D.P.S. Act. There is no FSL report to establish that the substance recovered is ganja. It is next contended that identically placed co-accused Mohd. Bablu Farooqui and Vansh Narayan Yadav @ Pappu have been granted bail by this Court vide orders dated 10.08.2023 and 04.07.2023 passed in Criminal Misc. Bail Application Nos 31070 of 2023 and 20004 of 2023. The applicant claims parity. The applicant is in jail since 10.04.2023 having no criminal history and in case, he is enlarged on bail, he will not misuse the said liberty.

5. Learned AGA 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 mandatory provisions of Sections 42, 50, 51 and 52-A of N.D.P.S. Act have not been complied with. There is no independent witness to the alleged recovery. The sample was not taken from each packet, one common sample was prepared and sent to the Forensic Science Laboratory. Thus, the procedure for sampling adopted is in violation of Rules 8, 9, 10 and 11 of the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022. The inventory of seized contraband was not duly certified by the Magistrate. The applicant has no criminal antecedents. Hence, there are reasonable grounds to believe that the applicant shall not indulge himself in other cases of like nature. Identically placed co-accused Mohd. Bablu Farooqui and Vansh Narayan Yadav @ Pappu have been granted bail by this Court. Further, the applicant has remained confined for almost eight months and after submission of the charge-sheet there is no hope of early conclusion of trial, 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 the merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

7. Let the applicant **Raja Rayeen** involved in the aforesaid case crime be released on bail on his furnishing a personal bond and two 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; and,

(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 :- 7.12.2023

Lbm/-