Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42046 of 2022

Applicant :- Sonu
Opposite Party :- State of U.P.
Counsel for Applicant :- Rajesh Kumar Pandey,Dharmendra Kumar Singh,Syed Ali Imam
Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma,J.

1. Heard counsel for the applicant and Sri Umesh Kumar Mishra, learned A.G.A. for the State-opposite party.

2. 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. 53 of 2022, under Sections 8/20 of N.D.P.S. Act, Police Station- Beeta-2, District- Gautam Buddh Nagar during the pendency of trial.

3. Counsel for the applicant submitted that the applicant has been falsely implicated in the instant case. The applicant was not arrested at the spot. False recovery of 25 kg and 400 grams (2 bandals) Ganja has been shown from the house of the applicant. The other named co-accused are the brothers of the applicant. There is no independent witness to the alleged recovery. The mandatory provisions of Sections 42, 50, 51 and 52A of N.D.P.S. Act have not been complied with. A common sample was taken from two bandals. The procedure of sampling prescribed in Rule 8, 9, 10 (1), 12 and 13 of the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022 have been violated. It is next contended that identically placed co-accused, Anand, has been granted bail by this Court in Criminal Misc. Bail Application No. 43239 of 2022 vide order dated 28.11.2022. The applicant claims parity. The criminal history of the applicant has been explained in paragraph no. 2 of the supplementary affidavit. The applicant is in jail since 25.08.2022 and in case he is enlarged on bail, he will not misuse the said liberty.

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

5. Having heard counsel for the parties and having perused the record this Court prima facie finds that the mandate of Sections

42, 50, 51 and 52A of the N.D.P.S. Act has not been followed. There is no independent witness to the alleged recovery. Sample was not taken from each packet, one common sample was prepared and sent to the Forensic Science Laboratory. Thus, the procedure of 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. Further, identically placed co-accused, Anand, has been granted bail by this Court. Apart from the instant case, the applicant is not involved in any case under the N.D.P.S. Act, as such there are reasonable grounds to believe that the applicant shall not indulge himself in other cases of similar nature. Moreover, the applicant has remained confined for more than one year and three months and 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 merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

6. Let the applicant- **Sonu,** 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;

(iii) shall not pressurize the prosecution witnesses.

7. 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 :- 8.12.2023
Aditya

Digitally signed by :-
ADITYA KUSHWAHA
High Court of Judicature at Allahabad