

**Court No. - 75**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 36054 of 2023

**Applicant :-** Arbaj Khan

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Pradeep Kumar Yadav

**Counsel for Opposite Party :-** G.A.

**Hon'ble Umesh Chandra Sharma, J.**

1. Heard Sri Pradeep Kumar Yadav, learned counsel for the applicant, learned A.G.A for the State and perused the record.

2. By means of this bail application applicant seeks bail in Case Crime No. 227 of 2023, under Sections 8/20 NDPS Act, Police Station Sirsaganj, District Firozabad, during the pendency of trial.

3. Learned counsel for the applicant has argued that the applicant is absolutely innocent and has been falsely implicated in the present case with a view to cause unnecessary harassment and to victimize him. Learned counsel for the applicant contended that co-accused Muslim Miya who has been assigned the role of transportation of the contraband from the Nepal to India for the purposes of sale has already been enlarged on bail by the co-ordinate Bench of this Court *vide* **Criminal Misc. Bail Application No. 46012 of 2023** on 09.11.2023. He further contended that the role of purchase of contraband is assigned to accused Manish Rathore and Arbaaz

Khan the present applicant, from which it is very much clear that property-in-question was not of applicant. At the time of arrest it was solely in the possession of co-accused Muslim Miya and Smt. Sheela Devi.

4. Considering the facts and circumstances of the case that there is no criminal antecedent to the credit of the applicant and the property in question was not brought by the applicant, he is assigned the role of proposed purchaser, hence the bail application is allowed. There is no previous criminal history of the applicant. There is no likelihood of his abscondence or tampering with the evidence. The applicant claims parity, he is in jail since **03.04.2023**. In case he is enlarged on bail, he will not misuse the said liberty.

5. Learned A.G.A contended that so far as finding regarding none compliance of mandatory provision of Section 50 of the N.D.P.S is concerned, the same is not correct and this plea can not be taken as the property in question was kept on the motorcycle and the property in question was not recovered from the personal search of any of the accused person. Therefore in this case no bail can be allowed on the ground that there is violation of mandatory provisions of the Section 50 of the N.D.P.S Act.

6. Learned AGA has vehemently opposed the bail application but he could not dispute the submission made above.

7. Having regard to the facts, circumstances and the submissions made but without commenting on merits of the case, this Court is of opinion that the applicant is entitled to be enlarged on bail. Accordingly, the bail application is allowed.

8. Let the applicant - **Arbaj Khan**, 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.

9. 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 :- 17.11.2023**  
*Vinod.*