

Court No. - 76

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 36218 of 2023

Applicant :- Ishaq

Opposite Party :- State of U.P.

Counsel for Applicant :- Ram Prakash

Counsel for Opposite Party :- G.A.

Hon'ble Vikram D. Chauhan,J.

1. Learned A.G.A. for the State submits that instructions have been received and has no objection in case the bail application is heard on merits.

2. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.

3. It is submitted by learned counsel for the applicant that 6 Kg 55 gram Charas is alleged to have been recovered by the police from the public place. The applicant was apprehended along with co-accused Bhushan Rawat. It is submitted that as per prosecution case, one Bhushan Rawat was standing with the bag at a public place where the applicant is said to have come and met him and the bag in question was being transferred and in the process, applicant has been apprehended.

3-A. Learned counsel for the applicants submit that applicant on previous date 21.2.2023 was subjected to medical treatment at New Lakhanpur Hospital and Trauma Centre Private Limited and was discharged on 30.3.2023.

4. A perusal of the aforesaid document at page 27 of the paper book would demonstrate that the date of admission is 29.3.2023.

5. It is further submitted by learned counsel for the applicant that in respect of follow up treatment, applicant went to Kanpur Nagar where this incident has taken place. It is submitted that applicant has been falsely implicated in the present case and in this respect, necessary pleadings have been stated in paragraph nos.10 and 13 of the affidavit. The applicant has no previous criminal history. Applicant is languishing in jail since 27.4.2023 and in case he is released on bail, he will not misuse the liberty of bail and will cooperate in the trial.

6. Learned A.G.A. for the State opposed the prayer for bail and submits that applicant has been caught along with contraband substance, which is above commercial quantity and the Forensic Science Laboratory (FSL) report has come up confirming the substance to be Charas. He submits that the allegation of false implication are not tenable.

7. In the present case, it is to be seen that applicant has been apprehended while he was dealing with Bhushan Rawat and was caught along with bag of Charas weighing 6 kg 55 gram. According to learned counsel for the applicant, applicant was discharged from the hospital on 30.3.2023 and went to Kanpur Nagar again for follow up treatment. It is the case of the applicant that applicant has been falsely implicated in the present case. In this respect, necessary pleadings have been stated in paragraph nos.10 and 13 of the affidavit, which are quoted hereinbelow:-

"10. That recovery of charas from the possession of the applicant is totally wrong even for the purpose of treatment, the applicant was going to Kanpur Nagar as discharged from the hospital on 30.03.2023.

13. That it is most important to mention here that the police has falsely been implicated to the applicant and 6 Kg. 55 gm Charas forged disclosed the possession of the applicant. Therefore the police has not appear to the applicant before the gazetted officer."

8. It is to be seen that contraband substance recovered has been confirmed by the FSL report to be Charas. The recovered quantity is above commercial quantity. It is further to be seen that case of false implication has been set up by the applicant. Further, no details with regard as to how the police has falsely implicated the applicant has not been stated. General and vague allegation with regard to false implication has been made.

9. A plea of false implication has been raised by the applicant. A plea of false implication is required to be specific and factual foundation of the same is required to be laid down by accused in the pleadings. In **Ruli Ram Vs. State of Haryana, (2002) 7 SCC 691**, it has been observed by the Supreme Court that when a plea of false implication is advanced by the accused, foundation for the same has to be established. Further, in **Ram Udgar Singh Vs. State of Bihar, (2004) 10 SCC 443**, the Apex Court has held that foundation has to be laid if a plea of false implication is made. Vague allegations with regard to plea of false implication raised by accused is not permissible under law. The plea of false implication cannot be on the basis of conjectures. In **Brahm Swaroop Vs. State of U.P., (2011) 6 SCC 288**, Supreme Court has observed that

a party has to lay down a factual foundation and prove by leading impeccable evidence in respect of its false implication. In the present case vague and general allegations have been made with regard to plea of false implication. The foundational fact and material particulars are absent. Such plea of false implication is not tenable.

10. Considering the facts and circumstances of the case, nature of offence, evidence, complicity of accused, submissions of learned counsel for the parties and without expressing any opinion on the merits of the case, the Court do not find it a fit case for bail.

11. Accordingly, the bail application of applicant- **Ishaq** in Case Crime No. 41 of 2023, under Sections 8/20/22/23/25/60 of N.D.P.S. Act, Police Station Collectorganj, District Kanpur Nagar is ***rejected***.

Order Date :- 28.10.2023

D. Tamang