

Court No. - 72

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 37447 of 2023

Applicant :- Harigiri

Opposite Party :- State of U.P.

Counsel for Applicant :- Girja Shanker Sen, Krishna Dutt Awasthi

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal, J.

1. List has been revised.
2. Heard Sri Krishna Dutt Awasthi, learned counsel for the applicant as well as Sri Deepak Kumar Singh, learned AGA for the State and perused the material placed on record.
3. By means of the present application, the applicant seeks bail in Case Crime No. 1120 of 2022, under Sections 8/18 of Narcotic Drugs and Psychotropic Substances Act, 1985 Police Station Baradari, District Bareilly, during the pendency of trial.
4. As per the prosecution story, 3 kg opium was recovered from the possession of the applicant by police on 28.11.2022.
5. It is submitted by the learned counsel for the applicant that the applicant is innocent and has been falsely implicated in the present case with a view to cause unnecessary harassment and to victimize him. No incriminating article has been recovered from the possession of the applicant. There is no independent witness to support the prosecution version. There is no chemical analyst report which indicates that the alleged recovery is a contraband article. There is no compliance of Sections 50 and 52-A of NDPS Act with regard to search and seizure. The applicant is the resident of State of Jharkhand and was working as labourer in the Uttar Pradesh. The applicant is languishing in jail since 29.11.2022 having no criminal history to his credit, deserves to be released on bail. In case, the applicant is released on bail he will not misuse the liberty of bail and shall cooperate with trial.
6. Per contra, learned A.G.A. has opposed the bail prayer of the applicant on the ground that the recovered contraband is of commercial quantity. However, learned AGA could not dispute the fact that the applicant has no criminal history.
7. The Apex Court in the case of ***Union of India vs. Shiv Shankar Keshari, (2007) 7 SCC 798*** has held that the court while considering the application for bail with reference to Section 37 of the Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the court has not to consider the matter as if it is pronouncing a judgment of acquittal and

recording a finding of not guilty.

8. Considering the facts of the case and keeping in mind, the ratio of the Apex Court's judgment in the case of ***Union of India vs. Shiv Shankar Keshari (supra)***, larger mandate of Article 21 of the constitution of India, the nature of accusations, the nature of evidence in support thereof, the severity of punishment which conviction will entail, the character of the accused-applicant, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interest of the public/ State and other circumstances, but without expressing any opinion on the merits, I am of the view that it is a fit case for grant of bail. The bail application is allowed.

9. Let the applicant- **Harigiri**, who is involved in the aforementioned 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 following conditions. Further, before issuing the release order, the sureties be verified.

i. The applicant will not tamper with the evidence during the trial.

ii. The applicant will not pressurize/ intimidate the prosecution witness.

iii. The applicant will appear before the trial court on the date fixed, unless personal presence is exempted.

iv. The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

v. 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.

10. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

11. It is made clear that observations made in granting bail to the applicant shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

(Justice Krishan Pahal)

Order Date :- 27.10.2023

Siddhant