

Court No. - 44

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 37876 of 2023

Applicant :- Pankaj Kushwaha

Opposite Party :- State of U.P.

Counsel for Applicant :- Anurag Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Pankaj Bhatia,J.

1. Heard learned counsel for the applicant as well as learned A.G.A. and perused the record.
2. The FIR in question was lodged alleging the recovery of 31.900 kilograms Ganja from the applicant.
3. The contention of the Counsel for the applicant is that the recovery is below the commercial quantity. He argues that the alleged recovery is contrary to the mandate of Section 50 of the NDPS Act as the same has not been done in the presence of Gazetted Officer or Magistrate, even there are no independent witnesses, the manner in which sample was done, was not in terms of mandate of Section 52A of the N.D.P.S. Act and the co-accused against whom the same recovery was done has been enlarged on bail, vide order dated 3.11.2023. The applicant has no criminal antecedents. He further submits that since the role of the applicant is identical to that of co-accused Sanjay Kumar, who has already been enlarged on bail, the applicant is also entitled to be enlarged on bail on the ground of parity.
4. Learned A.G.A. vehemently opposed the bail prayer.
5. Considering the fact that the co-accused has already been enlarged on bail and the applicant and the recovery prima facie is not in terms of Section 100 Cr.P.C. and the sample is also not according to Section 52A of the NDPS Act, the applicant is in custody since 28.4.2023, I am of the view that the applicant is entitled to be released on bail on the ground of parity.
6. Accordingly, the bail application is allowed.
7. Let the applicant **Pankaj Kushwaha** be released on bail in FIR/ Case Crime No. 152 of 2023, under Section 8/20 of the NDPS Act, Police Station Vishnupura, District Kushinagar on his furnishing personal bonds and two reliable sureties of the like amount each to

the satisfaction of the court concerned with the following conditions:

(a) The applicant shall execute a bond to undertake to attend the hearings;

(b) The applicant shall not commit any offence similar to the offence of which he is accused or suspected of the commission; and

(c) 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.

Order Date :- 7.11.2023

Faridul