

Neutral Citation No. - 2023:AHC:215922

Reserved On:- 08.11.2023

Delivered On:-09.11.2023

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 38254 of 2023

Applicant :- Guddu Kushwaha

Opposite Party :- Union of India

Counsel for Applicant :- Girja Shanker Mishra,Pratiksha Rai

Counsel for Opposite Party :- Ashish Pandey

Hon'ble Siddharth,J.

1. Rejoinder-affidavit filed today is taken on record.
2. Heard Miss Pratiksha Rai, Advocate, holding brief of Sri G.S. Mishra, learned counsel for the applicant; Sri Ashish Pandey, learned counsel for NCB as well as the learned AGA for the State and perused the material placed on record.
3. The instant bail application has been filed on behalf of the applicant, **Guddu Kushwaha**, with a prayer to release him on bail in **Complaint Case No.03 of 2021, under Sections 8/20/25 and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985,, Police Station– N.C.B. Lucknow, District- Sonbhadra**, during pendency of trial.
4. There is allegation against the applicant that he is owner of the truck allegedly involved in illegal the transport of *ganja*. Hence, he has been implicated in this case.
5. Learned counsel for the applicant has submitted that the truck of the applicant was taken by co-accused, Pradeep Kesarwani on hire for the purpose of transportation of rice husk and in case he used the same for the purpose of transportation of contraband, he is not liable for the same. It has been further submitted by learned counsel for applicant, Miss Pratiksha Rai, that in the call details of co-accused brought on record alongwith the complaint preferred by the NCB, before Special Judge, not a single call has been made from or on the mobile phone o the applicant by any of the co-accused. Co-accused, Sanjay Singh Patel, Ram Singh and Pradeep Kesarwani, have already been enlarged on bail by this Court and other coordinate Bench of this Court and their bail orders are already on record. She has further submitted that only because of being owner of the vehicle and without any evidence of active involvement of applicant in this case, he cannot be kept behind bars indefinitely. The applicant has

been falsely implicated in this case. He has no criminal history to his credit and is languishing in jail since 20.06.2022. The trial in the aforesaid case is not likely to be concluded in near future.

6. Learned A.G.A. and learned counsel for NCB have vehemently opposed the prayer for bail of the applicant by contending that the innocence of the applicant cannot be adjudged at pre-trial stage, therefore, she does not deserves any indulgence. In case the applicant is released on bail, she will again indulge in similar activities and will misuse the liberty of bail.

7. Having considered the submissions of the parties noted above, finding force in the submissions made by the learned counsel for the applicant, keeping in view the uncertainty regarding conclusion of trial; one sided investigation by police, ignoring the case of accused side; applicant being under-trial having fundamental right to speedy trial; larger mandate of the Article 21 of the Constitution of India, considering the dictum of Apex Court in the case of ***Satendra Kumar Antil Vs. C.B.I. & Another, passed in S.L.P.(Crl.) No. 5191 of 2021, judgement dated 11.7.2022*** and considering 5-6 times overcrowding in jails over and above their capacity by under trials and without expressing any opinion on the merits of the case, let the applicant involved in the aforesaid 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 with the following conditions that :-

(i) The applicant shall not tamper with the evidence or threaten the witnesses.

(ii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in Court. In case of default of this condition, it shall be open for the Trial Court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(iii) The applicant shall remain present before the Trial Court on each date fixed, either personally or as directed by the Court. In case of his absence, without sufficient cause, the Trial Court may proceed against him under Section 229-A of the Indian Penal Code.

(iv) In case the applicant misuse the liberty of bail during trial and in order to secure his presence, proclamation under Section 82 Cr.P.C. is issued and the applicants fail to appear before the Court on the date fixed in such proclamation then the Trial Court shall initiate proceedings against him in accordance with law under Section 174-A of the Indian Penal Code.

(v) The applicant shall remain present in person before the Trial Court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the Trial Court absence of the applicant is deliberate or without

sufficient cause, then it shall be open for the Trial Court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

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

9. Identity and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

Order Date :-09.11.2023

Abhishek