

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 37597 of 2023

Applicant :- Ankit Singh

Opposite Party :- State of U.P.

Counsel for Applicant :- Madan Mohan, Nitin Sharma

Counsel for Opposite Party :- G.A

Hon'ble Vivek Varma, J.

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

2. Heard counsel for the applicant and learned A.G.A. for the State-opposite party.

3. The instant bail application, under Section 439 Cr.P.C., has been filed with a prayer to enlarge the applicant on bail in Case Crime No. 104 of 2023, under Sections 8/20 of the N.D.P.S. Act and Section 120-B of I.P.C., Police Station- Gopiganj, District- Bhadohi, during the pendency of trial.

4. Counsel for the applicant contends that the applicant was not arrested at the spot. The applicant was nominated in the FIR in pursuance of the statements of co-accused, Chandradev Singh, Mahendra Kumar Patel and Ashish Kumar Patel before the police authorities. The said statements, insofar as, it implicate the applicant are unreliable. The mandatory provisions contained under Section 42, 50 of the N.D.P.S. Act have not been complied with. Further, the procedure of sampling prescribed in Rule 8, 9, 10 and 11 of the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022 have also been violated. It is next contended that the co-accused Chandradev Singh, Mahendra Kumar Patel and Ashish Kumar Patel have been granted bail by this Court in Criminal Misc. Bail Application Nos. 41748 of 2023 and 26060 of 2023 vide orders dated 10.10.2023 and 09.06.2023 respectively. Further, the applicant is in jail since 07.07.2023, having no criminal history and in case, he is enlarged on bail, he will not misuse the said liberty.

5. Learned A.G.A. has opposed the prayer for bail but could not

satisfactorily dispute the aforesaid submissions from the record.

6. Having heard counsel for the state and having perused the record this Court prima facie finds that the mandate of Chapter V of the N.D.P.S. Act has not been followed. The sampling has not been done in the presence of Magistrate, which is required under Section 52A of the NDPS Act. Further, the applicant has no criminal antecedents and has remained confined for almost four months and after submission of the charge-sheet there is no hope of early conclusion of trial, more so when no reasonable apprehension has been brought to the fore by the State that the applicant, if enlarged on bail, would either tamper with the evidence or delay the trial or intimidate the witness, without commenting on merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

7. Let the applicant **Ankit Singh**, 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.

8. 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 :- 6.11.2023

Mohini