

Court No. - 75

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 38035 of 2023

Applicant :- Nadeem

Opposite Party :- State of U.P.

Counsel for Applicant :- Amit Kumar Pandey

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 31654 of 2023

Applicant :- Babu @ Babbu

Opposite Party :- State of U.P.

Counsel for Applicant :- Abhay Krishna Singh, Nasiruzzaman

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 39637 of 2023

Applicant :- Anjani Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Rahul Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Umesh Chandra Sharma,J.

1. Heard learned counsel for the applicants, learned AGA for the State-opposite party and perused the record.
2. The instant bail application has been filed with a prayer to enlarge the applicants on bail in Case Crime No.76 of 2023, under Section 8/20/29 N.D.P.S. Act and Section 482 I.P.C. Police Station- Jewar, District- Greater Noida (Commissionerate Gautam Buddh Nagar) during the pendency of trial.
3. Learned counsel for the applicant submitted that the applicant has been falsely implicated in the instant case. It is submitted that

pursuant to the judgment of the Apex Court in ***Union of India Vs. Mohanlal & Another, 2016 0 Supreme (SC) 82***, on which basis new rules been formed, though the search was made before the Assistant Commissioner of Police, however, no independent witness nor other mandatory provisions especially Section 52- A, of the N.D.P.S. Act, have been complied with.

4. Learned counsels for the applicants have heavily relied on rule 10 of the N.D.P.S (Seizure, Storage, Sampling & Disposal) Rules, 2022, (the Act) which is as under:

10. Drawing the samples.- (1) One sample, in duplicate, shall be drawn from each package and container seized.

(2) When the packages and containers seized together are of identical size and weight bearing identical marking and the contents of each package give identical results on colour test by the drugs identification kit, conclusively indicating that the packages are identical in all respects, the packages and containers may carefully be bunched in lots of not more than ten packages or containers, and for each such lot of packages and containers, one sample, in duplicate, shall be drawn;

Provided that in the case of ganja, poppy straw and hashish (charas) it may be bunched in lots of not more than fourty packages or containers.

(3) In case of drawing sample from a particular lot, it shall be ensured that representative sample in equal quantity is taken from each package or container of that lot and mixed together to make a composite whole from which the samples are drawn for that lot.

5. On the basis of above Rule, it is contended that it is mandatory for the police personnel/authorities to ensure that sample is taken in equal quantity from each packet but in this case only 100 gm Ganja from the one packet is alleged to have taken by the police which is in violation of mandatory Rule of N.D.P.S. Act, 2022. The sample has not been taken after marking of each packets/bundles to make a composite items/substance as a whole and such sample from such composite as a whole has not been taken. In such a case, it can not be said that the rest 32 packets were also containing Ganza.

6. The learned counsels have relied on the order of a coordinate Bench of this Court passed in **Criminal Misc. Bail Application No. 42416 of 2021 dated 13.3.2023, (Kalim Turk Vs. State of U.P.)** wherein due to non-compliance of order/instruction no.1, 1989, the accused was enlarged on bail where 14 quintal and 30 gms. Ganza was alleged to be recovered.

7. The learned counsels have further relied on order dated 7.6.2022 passed in **Criminal Misc. Bail Application No. 18303 of 2020 (Wali Hasan Vs. State of U.P.)**, whereby the bail application was allowed on the ground that when 201 K.G. Ganza was recovered in 91 packets, however, no proper sampling was taken in view of the order/instruction no. 1 of 1989.

8. There is no previous criminal history of the applicants- Nadeem & Anjani Kumar, they are in jail since 08.04.2023. The applicant, Babu @ Babbu, has criminal history of one case, same has been explained in para 29 of the affidavit, he is in jail since 30.05.2023. It is lastly contended that the applicants undertake to cooperate in the trial and not to tamper with the evidence or abscond, in case, they are enlarged on bail.

9. Learned AGA has opposed the prayer for bail but could not satisfactorily dispute the aforesaid submissions from the record.

10. Having regard to the submissions made and the judicial pronouncements referred to but without commenting on merits of the case, I am of the opinion that the applicants are entitled to be enlarged on bail.

11. Let the applicants **Nadeem, Babu @ Babbu & Anjani Kumar**, involved in the aforesaid case crime be released on bail on their furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to the conditions that they:

- (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;
- (iv) shall appear before the concerned S.H.O. on any day of the first week of every month till the further order of the trial court.

12. 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
S.Verma