

Court No. - 44

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 38395 of 2023

Applicant :- Virendra Singh

Opposite Party :- State of U.P.

Counsel for Applicant :- Istiyaq Ali, Ali Hasan

Counsel for Opposite Party :- G.A.

Hon'ble Pankaj Bhatia, J.

1. Heard learned counsel for the applicant, learned AGA and perused the record.
2. The FIR in question was lodged alleging that on the basis of a search carried out in a vehicle, 60 packets of *Ganja* were allegedly recovered. The said 60 packets alongwith weights were duly mentioned in the FIR. It also bears from record that out of the 60 packets, 10 gm each were drawn as a sample; all the samples were mixed and a common sample of 600 gm was sent for analysis.
3. Contention of learned counsel for the applicant is that the applicant is driver of the vehicle in question. He further argues that the manner in which the sampling was done is contrary to the Standing Order dated 01/1989 issued under Section 52A of NDPS Act, which requires that the sampling of 24 gm. should be drawn from each of the allegedly recovered contraband kept in various packets. It is further argued that the mandate of Section 52A of NDPS Act was not followed. He places reliance on the judgment of the Supreme Court in the case of ***Simarnjit Singh v. State of Punjab; 2023 LiveLaw (SC) 570***. He next argues that the alleged recovery was effected on 04.04.2023 and the same was sent to Laboratory on 10.04.2023 i.e. beyond 72 hours, which is prescribed under the Standing Orders.
4. In terms of the counter affidavit, it is clear that the samples were received in the Laboratory on 10.07.2023 and the report indicates that in the sample sent, Ganja was found on the analysis of the sample. The report also indicate that in total 597.83 gm was received for chemical analysis which is less than the amount of sample allegedly sent by the recovering party. In the light of the said, this Court is to consider whether the test of Section 37 NDPS Act stands satisfied or not?
5. Learned AGA has opposed the bail application.

6. Considering the fact that there were major discrepancies in recovering the samples, sending the samples within the time prescribed and mixing of the samples drawn, *prima-facie*, the manner in which the same was done was contrary to the standing orders, as such, on the first test, this Court can form a view that the prosecution may not be able to establish the offence against the applicant.

7. As regards the second of the twin conditions, as the applicant has no criminal antecedent, in view of the law laid down in the case of ***Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra and Anr.*** reported in (2005) 5 SCC 294, the second of the said test also stands satisfied. As such, the applicant is entitled to be enlarged on bail. In view thereof, the application is ***allowed.***

8. Let the applicant ***Virendra Singh*** be released on bail in FIR No.89 of 2023, under Section 8/20 of NDPS Act, P.S. Friends Colony, District Etawah on his furnishing a personal bond with two sureties of the like amount each to the satisfaction of 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 :- 6.11.2023

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