

Court No. - 76

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 38707 of 2023

Applicant :- Mohit

Opposite Party :- State of U.P.

Counsel for Applicant :- Abhai Kumar Singh, Awadhesh Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Vikram D. Chauhan, J.

1. Learned A.G.A. for the State submits that instructions have been received and has no objection in case the bail application is heard on merits.
2. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.
3. It is submitted by learned counsel for the applicant that 130 gm of Alprazolam powder has been recovered from public place. It is submitted that provisions of Section 50 of N.D.P.S. Act has not been complied with in the present case and there is no independent witness of the alleged recovery. The applicant has no previous criminal history. Applicant is languishing in jail since 6.8.2023 and in case he is released on bail, he will not misuse the liberty of bail and will cooperate in the trial.
4. Learned A.G.A. for the State opposed the prayer for bail and submits that Forensic Science Laboratory report has been received, which confirms the recovered substances is Alprazolam. He further submits that provisions of Section 50 of N.D.P.S. Act has been complied with as per FIR, consent certificate was signed by the applicant and the aforesaid averments has not been put to challenge by the applicant in the bail application.
5. It is to be seen in the present case that commercial quantity of 130 gm Alprazolam powder has been recovered. Provisions of Section 50 of N.D.P.S. Act has been complied with as the consent letter has been given by the applicant as per FIR. The aforesaid averments has not been put to challenge by the applicant in the bail application. Once the consent letter has been signed by the applicant, which is not disputed by the applicant, applicant is not

permitted to challenge the proceedings under Section 50 of N.D.P.S. Act.

6. It is further to be noted that challenge has been made under the N.D.P.S. Act on the ground that there being no independent witness. Police authority itself is the independent witness. The only allegation against the police authority is that they have demanded illegal money and when the same was refused, the local police has planted the same. The allegations made by the applicant in the affidavit filed in support of bail application are purely vague in nature and lacks specification.

7. A plea of false implication has been raised by the applicant. A plea of false implication is required to be specific and factual foundation of the same is required to be laid down by accused in the pleadings. In **Ruli Ram Vs. State of Haryana, (2002) 7 SCC 691**, it has been observed by the Supreme Court that when a plea of false implication is advanced by the accused, foundation for the same has to be established. Further, in **Ram Udgar Singh Vs. State of Bihar, (2004) 10 SCC 443**, the Apex Court has held that foundation has to be laid if a plea of false implication is made. Vague allegations with regard to plea of false implication raised by accused is not permissible under law. The plea of false implication cannot be on the basis of conjectures. In **Brahm Swaroop Vs. State of U.P., (2011) 6 SCC 288**, Supreme Court has observed that a party has to lay down a factual foundation and prove by leading impeccable evidence in respect of its false implication. In the present case vague and general allegations have been made with regard to plea of false implication. The foundational fact and material particulars are absent. Such plea of false implication is not tenable.

8. Considering the facts and circumstances of the case, nature of offence, evidence, complicity of accused, submissions of learned counsel for the parties, the Court do not find it a fit case for bail. The bail application of applicant-**Mohit** in Case Crime No.519 of 2023, under sections 21/22 N.D.P.S. Act, P.S. Koshikala, District Mathura is **rejected** accordingly.

Order Date :- 28.11.2023

D. Tamang