

Court No. - 64

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 39024 of 2023

Applicant :- Sumit Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Abhay Krishna Singh

Counsel for Opposite Party :- G.A.

Hon'ble Siddharth,J.

Heard learned counsel for the applicant as well as the learned AGA for the State and perused the material placed on record.

The instant bail application has been filed on behalf of the applicant, Sumit Kumar, with a prayer to release him on bail in **Case Crime No. 111 of 2021, under Sections 8/20/29 of N.D.P.S. Act, Police Station- Hasanpur, District- Amroha**, during pendency of trial.

This is second bail application of applicant. The first bail application was rejected by coordinate Bench of this court 21.11.2022. Now, the matter has been placed before this Court by way of nomination.

Learned counsel for the applicant has submitted that applicant has parity of role with co-accused, Kalim Turk, who has already been enlarged on bail vide bail application No. 42416 of 2021 by the order quoted hereinbelow:-

" Heard Sri N. I. Jafri, learned Senior Advocate, assisted by Ms. Ambreen, learned counsel for the applicant and learned A.G.A. for the State.

This bail application has been preferred by the accused-applicant, Kalim Turk, who is involved in Case Crime No.111 of 2021, under Sections 8/20/29 NDPS Act, Police Station-Hasanpur, District- Amroha.

Learned counsel for the applicant has submitted that applicant has been falsely implicated in the present case due to ulterior motive, on the basis of false and planted recovery of 14 quintal and 30 grams 'ganja' has been recovered from the applicant and four other co-accused and there is no public witness of the alleged recovery. He has further submitted that total 140 packets of 'ganja' was allegedly recovered from the joint possession of the applicant and another co-accused persons weighing 14 quintal 30 grams. From all the packets small quantity of sample was collected which weighed

900 grams and it was kept as sample. Remaining ganja from 140 packets was sealed in 47 bags. He has submitted that the prosecution has violated Clause 2.1 to 2.8 of Standing Order/Instruction No.1 of 1989, which are as follows :

2.1 All drugs shall be classified, carefully, weighed and sampled on the spot of seizure. 2.2 All the packages/containers shall be numbered and kept in lots for sampling. Samples from the narcotic drugs and psychotropic substances seized, shall be drawn on the spot of recovery, in duplicate, in the presence of search witnesses (Panchas) and the persons from whose possession the drug is recovered and a mention to this effect should invariably be made in the panchnama drawn on the spot.

2.3 The quantity to be drawn in each sample for chemical test shall not be less than 5 grams in respect of all narcotic drugs and psychotropic substances save in the cases of opium, ganja and charas (hashish) where a quantity of 24 grams in each case is required for chemical test. The same quantities shall be taken for the duplicate sample also. The seized drugs in the packages/containers shall be well mixed to make it homogeneous and representative before the sample (in duplicate) is drawn.

2.4 In the case of seizure of a single package/container, one sample in duplicate shall be drawn. Normally, it is advisable to draw one sample (in duplicate) from each package/container in case of seizure of more than one package/container.

2.5 However, when the packages/containers seized together are of identical size and weight, bearing identical markings and the contents of each package given identical results on colour test by the drug identification kit, conclusively indicating that the packages are identical in all respects the packages/container may be carefully bunched in lots of 10 package/containers except in the case of ganja and hashish (charas), where it may be bunched in lots of, 40 such packages/containers. For each such lot of packages/containers, one sample (in duplicate) may be drawn.

2.6 Where after making such lots, in the case of hashish and ganja, less than 20 packages/containers remain, and in the case of other drugs, less than 5 packages/containers remain, no bunching would be necessary and no samples need be drawn.

2.7 If such remainder is 5 or more in the case of other drugs and substances and 20 or more in the case of ganja and hashish, one more sample (in duplicate) may be drawn for such remainder package/container.

2.8 While drawing one sample (in duplicate) from a particular lot, it must be ensured that representative sample the in equal quantity is taken from each package/container of that lot and mixed together to make a composite whole from which the samples are drawn for that lot.

He has submitted that guidelines have legal sanction and required to be strictly followed. In the present case guidelines aforesaid have been violated and the applicant has been falsely implicated in this case. It is also submitted that the applicant is in jail since 19.03.2021 and he undertakes that he will not misuse liberty, if granted.

Learned A.G.A. has opposed the prayer for bail by contending that the innocence of the applicant cannot be adjudged at pre-trial stage who is involved in supplying contraband, therefore, the applicant does not deserve any indulgence. In case the applicant is released on bail he will again indulge in similar activity. The "reasonable grounds" mentioned in Section 37(1)(b) (ii) of NDPS Act mean something more than prima facie ground. It implies substantial probable causes for believing that accused is not guilty of the offence charged and points to existence of such facts and circumstances which are sufficient to hold that accused is not guilty.

However the Apex Court in the Case of Union of India vs. Shiv Shankar Keshari, (2007) 7 SCC 798 has held that the court while considering the application for bail with reference to Section 37 of the Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty.

Considering the facts of the case and keeping in mind the arguments advanced on behalf of the parties, the ratio of the Apex Court's judgment in the case of Union of India vs. Shiv Shankar Keshari, (2007) 7 SCC 798, larger mandate of Article 21 of the constitution of India, the nature of accusations, the nature of evidence in support thereof, the severity of punishment which conviction will entail, the character of the accused-applicant, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interest of the public/ State and other circumstances, but without expressing any opinion on the merits, I am of the view that it is a fit case for grant of bail.

Let aforesaid applicant be released on bail in the aforesaid case crime number on his furnishing a personal bond and two reliable sureties of the like amount to the satisfaction of the court concerned with the following conditions-

(i) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code;

(ii) In case, the applicant misuses the liberty of bail and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicant fails 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.

(iii) 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 default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of his

bail and proceed against him in accordance with law. In case of breach of any of the above conditions, the complainant is free to move an application for cancellation of bail before this court. Identity and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted."

Learned counsel for applicant has submitted that the role of applicant is stands on similar footing to co-accused, Kalim Turk. The applicant has been falsely implicated in this case. He has no criminal history to his credit and is languishing in jail since 19.03.2021. The trial in the aforesaid case is not likely to be concluded in near future.

Per contra learned A.G.A. has opposed the prayer for bail of the applicant by contending that the innocence of the applicant cannot be adjudged at pre-trial stage, therefore, he 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.

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.

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

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

The court below is directed to conclude the trial against the applicant, as expeditiously as possible, preferably within a period of one year.

Registrar(Compliance) is directed to communicate this order to the concerned court below within ten days.

Order Date :- 15.12.2023

Abhishek