

Court No. - 75

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 38969 of 2023

Applicant :- Yashpal Singh

Opposite Party :- State of U.P.

Counsel for Applicant :- Anil Kumar Jaiswal, Abha Pandey, Lal Ji Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Umesh Chandra Sharma, J.

1. Heard learned counsel for the applicant, 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 applicant on bail in Case Crime No. 355 of 2023, under Section 8/20/29 N.D.P.S. Act, Police Station- Baberu, District-Banda, during the pendency of trial.
3. Counsel for the applicant submitted that the applicant has been falsely implicated in the instant case. False recovery of 100 k.g. 'Ganja' has been shown from the vehicle which was driven by the applicant. There is no independent witness to the alleged recovery. The mandatory provisions of N.D.P.S. Act have not been complied with. There is no F.S.L. report to establish that the substance recovered is Ganja'. There is no previous criminal history of the applicant. The applicant is in jail since 16.07.2023, in case, he is enlarged on bail, he will not misuse the said liberty.
4. The learned A.G.A. has opposed and has controverted the version of the bail application by filing counter affidavit and has reiterated the averments of the F.I.R. and the recovery memo. The F.S.L. Report has also been annexed with the counter affidavit. Therefore, the applicant is not liable to be enlarged on bail.
5. The learned counsel for the applicant argued that if there were 20 packets why it was converted into 4 packets which shows foul game on the part of the police and if it was done so, it was arbitrary and illegal act on the part of the police. Learned counsel has argued that the standing order/instruction no. 1 of 1989 have not been followed. The guidelines laid down by the Apex Court in several judicial pronouncements have not been followed. The

directions given in **Maghilal Vs. State of Madhya Pradesh, 2023 All SCR (Crl.) 1496: 2023 (3) Crimes.** have not been followed in which the compliance of Section 52 A of the N.D.P.S. have been said to be mandatory. Neither any public witness were taken nor any Magistrate or Gazetted Officer was called for before the search and seizure nor samples were taken properly from each of the alleged packets. There is no previous criminal history of the accused, there is no likelihood of his abscondance.

6. In view of the aforesaid arguments and judgement this Court is of the view that since the charge-sheet has been submitted and no investigation is pending and there is no likelihood of disposal of the case in near future, the bail application is liable to be allowed and the applicant is liable to be enlarged on bail.

7. The bail application is allowed.

8. Let the applicant **Yashpal 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.

9. 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 :- 18.10.2023

S.Verma