

**Court No. - 74**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 39401 of 2023

**Applicant :-** Avanish Kumar Singh

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Brij Bhushan Upadhyay, Amit Kumar Malviya, Yogesh Mishra

**Counsel for Opposite Party :-** G.A.

**Hon'ble Vivek Varma, J.**

1. Learned AGA for the State submits that the instructions have been received and he has no objection in case the bail application is decided on merits.

2. Heard learned counsel for the applicant, learned AGA for the State-opposite party and perused the record.

3. The instant bail application, under Section 439 Cr.P.C., has been filed with a prayer to enlarge the applicant on bail in Case Crime No. 226 of 2023, under Sections 419, 420, 467, 468, 471 I.P.C., and 8/20/29 N.D.P.S. Act, Police Station- Rohaniya, District- Varanasi during the pendency of trial.

4. Counsel for the applicant submitted that the applicant has been falsely implicated in the instant case. Recovery of 'Ganja' has been shown from a vehicle. The applicant was standing near the said vehicle. There is nothing on record to demonstrate 'conscious possession' of the applicant. The mandatory provisions of Section 42, 50 and 51 of N.D.P.S. have not been complied with. There is no independent witness to the alleged recovery. There is no F.S.L. report to establish that the substance recovered is 'Ganja'. The applicant does not have any criminal history. The applicant is in jail since 1.8.2023. In case, he is enlarged on bail, he will not misuse the said liberty.

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

5. Having heard learned counsel for the parties and after perusal of the record, this Court prima facie finds that there is no independent witness to the alleged recovery. The mandate of Chapter V and

Section 52A of the NDPS Act have not been followed. The applicant does not have any criminal antecedents. Moreover, the applicant has remained confined for more than two months and after submission of the charge-sheet there is no hope of early conclusion of trial, and no reasonable apprehension has been brought to the fore by the State that the applicant, if enlarged on bail, would either tamper with the evidence or delay the trial or intimidate the witness, therefore, without commenting on the merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

6. Let the applicant **Avinash Kumar 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.

7. 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 :- 28.10.2023**  
S.S.