

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 40724 of 2023

Applicant :- Jagveer Singh

Opposite Party :- State of U.P.

Counsel for Applicant :- Satya Dheer Singh Jadaun, Bhavesh Singh Jadaun

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Heard Sri Satya Dheer Singh Jadaun, learned counsel for the applicant and Dr. S.B. Maurya, learned AGA-I for the State-respondent.
2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 33 of 2023, under Section 21/22 NDPS Act, Police Station- Hathras Gate, District- Hathras, during pendency of the trial in the court below.
3. Learned counsel for the applicant submitted that this is the second bail application filed on behalf of the applicant and his first bail application was dismissed on merit by this Court on 12.04.2023 and he is pressing the instant second bail application on the ground that at the time of disposal of first bail application, the legal ground with regard to non compliance of Section 52-A NDPS Act could not be placed before this Court. He further submitted that from the recovery memo, it appears that sample was drawn at spot and not before the Magistrate, therefore, there is violation of Section 52-A NDPS Act, which is mandatory in nature.
4. He further submitted that applicant is a senior citizen aged about 65 years and he is not having any criminal history to his credit and he is in jail since 06.02.2023 i.e. for last more than 10 months and till date not even charges could be framed.
5. Per contra, learned AGA opposed the prayer for bail and submitted that after considering the entire facts of the case, first bail application of the applicant was dismissed on the ground that from his possession 800 gm. diazepam powder was recovered, which is commercial quantity but could not dispute the fact that

the point with regard to non compliance of Section 52-A NDPS Act could not be placed before this Court at the time of disposal of the first bail application.

6. He further could not dispute the fact that from the perusal of the recovery memo, it reflects that sample was drawn at spot and not before the Magistrate and applicant is not having any criminal history and he is aged about more than 65 years and is in jail in the present matter for last more than 10 months.

7. I have heard learned counsel for the parties and perused the record of the case.

8. However, this is the second bail application filed on behalf of the applicant and his first bail application was dismissed on merit by this Bench, considering the fact that from the possession of the applicant 800 gm. diazepam powder was recovered, which is commercial quantity but it appears from the order dated 12.04.2023 passed on the first bail application of the applicant that argument with regard to non compliance of Section 52-A NDPS Act was not placed before this Court.

9. From the recovery memo, it reflects that sample of the contraband was drawn at spot and not before the Magistrate, therefore, prima facie, it appears that there is non compliance of Section 52-A NDPS Act.

10. The Apex Court in the case of ***Mangilal Vs. The State of U.P. 2023 SCC Online 862*** observed that provisions of Section 52-A NDPS Act are mandatory in nature and in the case of ***Simarnjit Singh Vs. State of Punjab 2023 SCC OnLine SC 906***, the Apex Court observed that on non compliance of provisions of Section 52-A NDPS Act, entire recovery may become doubtful. Further, recently the Apex Court in the case of ***Yusuf @ Asif Vs. State 2023 SCC OnLine SC 1328*** observed that even non compliance of Section 52-A NDPS Act, may vitiate the trial.

11. Further, applicant is 65 years' old senior citizen and he is not having any criminal history and he is in jail since February, 2023 i.e. for last more than 10 months and till date, not even charges could be framed.

12. Therefore, considering the facts and circumstances of the case discussed above, in my view, applicant is entitled to be released on bail.

13. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is **allowed**.

14. Let the applicant- **Jagveer Singh** be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicant shall appear before the trial court on the dates fixed, unless his personal presence is exempted.

(ii) The applicant shall not directly or indirectly, make 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 any police officer or tamper with the evidence.

(iii) The applicant shall not indulge in any criminal and anti-social activity.

15. In case of breach of any of the above condition, the prosecution will be at liberty to move an application before this Court for cancellation of the bail of the applicant.

16. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial.

Order Date :- 8.12.2023

KK Patel