

Court No. - 77

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41005 of 2023

Applicant :- Wahid

Opposite Party :- State of U.P.

Counsel for Applicant :- Anil Kumar Mishra,Rahul Gaur

Counsel for Opposite Party :- G.A.

Hon'ble Mrs. Renu Agarwal,J.

1. Counter affidavit and rejoinder affidavit filed today are taken on record.

2. Heard learned counsel for the applicant, learned A.G.A. and perused the record.

3. The present application under Section 439 Cr.P.C has been filed seeking bail in Case Crime No.361 of 2023 under Sections 8,20, 29, 60(3) of the N.D.P.S Act Police Station Muradnagar District Ghaziabad.

4. Learned counsel for the accused-applicant submitted that the applicant is innocent and has been falsely implicated in the instant case due to ulterior motive. 201kg ganja is alleged to have been recovered from the car being driven by the applicant and other co-accused person. There is no independent witness to the alleged recovery. Mandatory provisions of Section 52-A of the N.D.P.S Act have not been complied with. The applicant has been implicated in the instant case as he could not satisfy the demand of police officials for illegal gratification. No Forensic Science Laboratory report which shows that the alleged recovered substance is prohibited contraband has been

submitted till date. It is submitted that the applicant has criminal history of three more cases apart from the instant case which is explained in paragraph-2 of the supplementary affidavit. The applicant is languishing in jail since 08.07.2023, in case he is enlarged on bail, he will not misuse the liberty of bail and will cooperate in the trial proceedings.

5. Learned counsel for the applicant has relied upon the law laid down by Hon'ble Supreme Court in the case of ***Khet Singh Vs. Union of India (2002) 4 SCC 380*** to contend that the instructions issued by the Narcotics Control Bureau, New Delhi are to be followed by the officer-in charge of the investigation of the crime coming within the purview of the NDPS Act, even though these instructions do not have the force of law. They are intended to guide the officers and to see that a fair procedure is adopted by the officer-in-charge of the investigation. Further reliance has also been placed on the judgment of Hon'ble Supreme Court in the case of ***Noor Aga Vs. State of Punjab (2008) 16 SCC 417*** to contend that the guidelines issued should not only be substantially complied with, but also in a case involving penal proceedings, vis-a vis a departmental proceedings, rigours of such guidelines may be insisted upon another important factor which must be borne in mind is as to whether such directions have been issued in terms of the provision of statute or not. Reliance is also placed on the

wherein Supreme Court has held as under:

"12. Section 52-A(1) of the NDPS Act, 1985 empowers the Central Government to prescribe by a notification the procedure to be followed for seizure, storage and disposal of the drugs and psychotropic substances. The Central Government has in exercise of that power issued Standing Order No. 1 of 1989 which prescribed the procedure to be followed while conducting seizure of the contraband. Two subsequent standing orders one dated 10.05.2007 and the other dated 16.01.2015 deal with disposal and destruction of seized contraband and do not alter or add to the earlier standing order that prescribes the procedure for conducting seizures. Para 2.2 of the Standing Order No. 1 of 1989 states that samples must be taken from the seized contraband on the spot at the time of recovery itself" .

6. On the contrary learned A.G.A has submitted that the accused was arrested on spot and 201 kg ganja was recovered on the pointing out of the accused from the car which he was driving. Recovered substance is much higher than the commercial quantity which 20 kg. There is no explanation regarding the huge recovery of ganja. It is also submitted that satisfaction of Section 37 NDPS Act is binding condition before recording order of bail in favour of the applicant. Learned A.G.A has placed reliance on the judgments of Supreme Court in the case of **Narcotic Control Bureau Vs. Mohit Agarwal** reported at **AIR 2022 Supreme Court 3444**; **Union of India Vs. Rattan Mallik @ Habul** reported at **(2009) 2 Supreme Court Cases 624**; **Union of India Vs. Ram Samujh** reported at **AIR online 1999 SC 90** and **State of Kerala Vs. Rajesh** reported at **AIR 2020 SC 721** to submit that the legislative mandate of Section 37 of the Act is required to be adhered and followed and

without the satisfaction of Section 37 (2), the bail of the applicant cannot be granted.

7. From the perusal of the recovery memo it transpires that after complying provisions NDPS Act the police recovered 201 kg ganja from the car. The weight of recovered substance on the spot was 201 kg which is a huge quantity.

8. Section 37 of the NDPS Act reads thus:

"[37 Offences to be cognizable and non-bailable:-(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for [offences under section 19 or section 24 or section 27 A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable ground for believing that he is not guilty for such offence and that he is not likely to commit any offence while on bail."

Additionally the court must be satisfied that the accused person is unlikely to commit the offence while on bail.

9. In the impugned case the Court has already complied with Sub-Section 1 of Section 37 of the NDPS Act. So far as the

second condition i.e. the satisfaction is Court is concerned, it is provided that there must be reasonable ground for believing that the accused is not guilty of alleged offence and he is not likely to commit any offence while on bail. The satisfaction contemplated regarding the accused not being guilty has to be based on reasonable ground. Expression "reasonable ground" means something more than prima facie ground. It contemplates that there must be substantial probable cause for believing that the accused is not guilty of the alleged offence.

10. Learned counsel for the applicant did not place any substance on record to substantiate that the accused is not guilty of the offence. It is apparent from the recovery memo that the accused was arrested along with incriminating material on the spot. It cannot be said at this stage that nothing has been found from the possession of accused. There is no material on record to persuade the Court to believe that the accused person is not guilty of offence and he will not commit the crime of such nature if he is released on bail. Learned counsel for the applicant did not advance any submission regarding the recovery made from the car being driven by the applicant. Only a general contention is made on behalf of the applicant that nothing incriminating is found from the possession of the applicant. At the stage of bail, it cannot be taken into account as no explanation is made as to why he is falsely implicated in the

case with such a huge recovery.

11. The general plea of false implication and the plea that sampling is not done as per standing order are not sufficient ground to satisfy the Court for the grant of bail in the case of recovery of contraband goods much higher than their commercial quantity from the possession of accused without satisfying the mandatory requirement stipulated in Section 37 (b) (2) of the NDPS Act. The recovery is yet to be proved during the trial.

12. There is no material on record to satisfy the requirement of Section 37 of NDPS Act that the accused will not repeat the crime.

13. To check the menace of dangerous drugs flooded in the market, the mandatory condition provided in Section 37 NDPS Act are provided to release the accused which are not full-filled in the present case.

14. In these circumstances, the present bail application is liable to be rejected and is hereby rejected.

(Renu Agarwal,J.)

Order Date :- 28.11.2023/Nadeem