

Court No. - 72

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43776 of 2023

Applicant :- Lokesh @ Lavkush

Opposite Party :- State of U.P.

Counsel for Applicant :- Vijay Babu

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. List has been revised.
2. Heard Sri Vijay Babu, learned counsel for the applicant, Sri Sunil Kumar, learned A.G.A. for the State and perused the material placed on record.
3. Applicant seeks bail in Case Crime No. 662 of 2022, under Sections 21/22 of The Narcotic Drugs And Psychotropic Substances Act, 1985, Police Station- Vrindavan, District- Mathura, during the pendency of trial.
4. As per the allegations of the FIR, the applicant is said to have been apprehended by the police on 28.11.2022 and 150 grams of alprazolam is said to have been recovered from his possession.
5. Learned counsel for the applicant has argued that the applicant is absolutely innocent and has been falsely implicated in the present case with a view to cause unnecessary harassment and to victimize him. Learned counsel for the applicant has stated that there is no compliance of mandatory provision of Sections 50 and 52 of the N.D.P.S. Act either. Learned counsel for the applicant has further stated that there is no criminal history of the applicant. The applicant is languishing in jail since 29.11.2022. In case, the applicant is released on bail, he will not misuse the liberty of bail.
6. Learned A.G.A. has vehemently opposed the bail application on the ground that the recovery of the contraband article is of commercial quantity.
7. In *Arif Khan @ Agha Khan v. State of Uttarakhand (2018) 18 SCC 380*, in which the Apex Court held that Section 50 of the NDPS Act mandatorily required search of the

suspect/accused to be carried out in the presence of a magistrate or Gazetted officer, even if such a suspect/accused had waived the right to be taken to a magistrate or Gazetted Officer.

8. 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.

9. Considering the facts of the case and keeping in mind, the ratio of the Apex Court's judgment in the case of ***Union of India vs. Shiv Shankar Keshari (supra)*** 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.

10. Upon hearing learned counsel for the parties, perusal of record and considering the complicity of accused, severity of punishment as well as totality of facts and circumstances, at this stage without commenting on the merits of the case, I find it a fit case for bail.

11. Let the applicant- **Lokesh @ Lavkush**, who is involved in aforementioned case 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 following conditions. Further, before issuing the release order, the sureties be verified.

(i) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the date 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.

(ii) 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 IPC.

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C., may be issued and if 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 IPC.

(iv) The applicant shall remain present, in person, before the Trial Court on dates fixed for (1) opening of the case, (2) framing of charge and (3) 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.

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

13. It is made clear that observations made in granting bail to the applicant shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

Order Date :- 13.10.2023

Vikas

[Krishan Pahal, J.]