

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41407 of 2023

Applicant :- Manoj

Opposite Party :- State of U.P.

Counsel for Applicant :- Ram Sanahi Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma,J.

1. Learned A.G.A. 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 and learned A.G.A. for the State.

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. 75 of 2023, under Sections 307 I.P.C. and 8/20 of the Narcotic Drugs and Psychotropic Substances Act, 1985, Police Station- Raya, District- Mathura during the pendency of trial.

4. Learned counsel for the applicant contends that the applicant was not arrested at the spot and has been falsely implicated in the instant case. The applicant has been nominated as an accused in the first information report in pursuance of a statement of co-accused Yogendra before the police authorities. The said statement insofar as it implicates the applicant is unreliable. False recovery of 35 kg. Ganja has been shown from a vehicle. No recovery of any incriminating article has been made from the applicant. The mandatory provisions contained under Sections 42, 50 and 51 of the N.D.P.S. Act have not been complied with. There is no independent witness to the alleged recovery. The procedure of sampling provided under Rules 8 and 9 of the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022 have not been complied with. There is no F.S.L. report to establish that the packets contain Ganja. It is next contended that co-accused Dharmveer, who was arrested along with the applicant, has been granted bail by the trial Court vide order dated 20.03.2023 passed in Bail Application No. 1111 of 2023. The criminal history of the applicant has been explained in Paragraph-2 of the supplementary affidavit. The applicant is in jail since 21.08.2023. In case, he is enlarged on bail, he will not misuse

the said liberty.

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

6. Having heard counsel for the state and after perusal of the record, this Court prima facie finds that the applicant was not arrested at the spot and the applicant has been nominated as an accused in the first information report in pursuance of a statement of co-accused Yogendra before the police authorities. No incriminating article has been recovered from the applicant. The mandate of Chapter 5 of the N.D.P.S. Act has not been followed. There is no independent witness to the alleged recovery. The procedure of sampling adopted is in violation of the Rules 8 and 9 of the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022. Co-accused Dharmaveer has been granted bail by the trial court. Further, 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 merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

7. Let the applicant- Manoj, 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; and,

(iii) shall not pressurize the prosecution witnesses.

8. 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 :- 1.11.2023

SKT/-