

Court No. - 75

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42325 of 2023

Applicant :- Rahul Nishad

Opposite Party :- State of U.P.

Counsel for Applicant :- Mohd. Mobin Ansari

Counsel for Opposite Party :- G.A.

Hon'ble Umesh Chandra Sharma,J.

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

2. The instant bail application under Section 439 Cr.P.C. has been filed with the prayer to enlarge the applicant on bail in Case Crime No. 236 of 2022, under Sections 21/22 of the Narcotic Drugs and Psychotropic Substances Act, 1985, Police Station- G.R.P. District- Allahabad, during the pendency of trial.

3. Learned counsel for the applicant contends that the applicant has been falsely implicated in the instant case. False recovery of 110 grams 'Alprazolam' powder has been from the possession of the applicant, however, there is nothing on record to demonstrate 'conscious possession' of the applicant. There is no independent witness to the alleged recovery. The mandatory provisions of Sections 42, 50 and 52 of the N.D.P.S. Act have not been complied with. There is no FSL report to establish that the substance recovered is 'Alprazolam'. The procedure of sampling is in violation of the provision conferred under the N.D.P.S. Act. The criminal history of the applicant has been explained in Paragraph-11 of the affidavit, there is no other case of N.D.P.S. Act to the credit of the applicant. The applicant is in jail since 11.08.2023 and in case he is enlarged on bail, he will not misuse the said liberty.

4. Learned A.G.A. 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 the mandate of Sections 42, 50 and 52A 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 Rules 8, 9, 10

and 11 of the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022. Apart from the instant case, the applicant is not involved in any case under the N.D.P.S. Act, as such there are reasonable grounds to believe that the applicant shall not indulge himself in other cases of similar nature. Moreover, the applicant has remained confined for almost four 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- **Rahul Nishad**, involved in the aforesaid case, be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of 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.

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 :- 7.12.2023

S.Verma