

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42539 of 2023

Applicant :- Shani @ Sani Jaiswal

Opposite Party :- State of U.P.

Counsel for Applicant :- Virendra Singh, Hari Om Gupta

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma, J.

1. Learned AGA 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 AGA 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. 193 of 2023, under Section 8/20 of N.D.P.S. Act, Police Station- Rohaniya, District- Varanasi, during the pendency of the trial.

4. Counsel for the applicant submits that the applicant was not arrested at the spot and he has been falsely implicated in the present case. The applicant was nominated as an accused in the first information report in pursuance of a statement of co-accused Siraj Hashmi before the police authorities. The said statement insofar as it implicates the applicant is unreliable. Except, the statement of co-accused Siraj Hashmi, there is no evidence against the applicant. No recovery of any incriminating article has been made from the applicant. There is no independent witness to the alleged recovery. The mandatory provisions of Sections 42 and 50 of N.D.P.S. Act have not been complied with. The procedure for sampling provided under Rule 8, 9, 10 and 11 of the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022 have been violated. The applicant is in jail since 31.07.2023 having no criminal history and in case, he is enlarged on bail, he will not misuse the said liberty.

5. Learned A.G.A. has opposed the prayer for bail but could not satisfactorily dispute the aforesaid facts from the record.

6. Having heard learned counsel for the parties and having perused

the record this Court prima facie finds that the applicant was not arrested at the spot. The applicant was nominated as an accused in the first information report in pursuance of a statement of co-accused Siraj Hashmi before the police authorities. At present, there is no substantive evidence against the applicant. Further, the mandate of Chapter V of the NDPS Act has not been followed. There is no independent witness to the recovery. The procedure for sampling provided under Rule 8, 9, 10 and 11 of the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022 have been violated. The applicant has no criminal antecedents. The applicant has remained confined for almost two and half months and after submission of the charge-sheet there is no hope of early conclusion of trial, more so when 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, without commenting on the merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

7. Let the applicant, **Shani @ Sani Jaiswal** involved in the aforesaid case be released on bail on his furnishing a personal bond and two sureties each of the like amount to the satisfaction of court concerned on the following conditions that:

- i. the applicant shall not temper with the prosecution evidence;
- ii. the applicant shall not pressurize the prosecution witness; and,
- iii. the applicant shall appear on each and every date fixed by the trial court.

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 :- 16.10.2023

Lbm/-