

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42651 of 2023

Applicant :- Vadil

Opposite Party :- State of U.P.

Counsel for Applicant :- Avinash Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma,J.

1. Heard learned Counsel for the applicant, Sri Neeraj Kumar Sharma, 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 a prayer to enlarge the applicant on bail in Case Crime No. 302 of 2023, under Sections 8/21/29 N.D.P.S. Act, Police Station- Kairana, District- Shamli during pendency of the trial.
3. Counsel for the applicant submits that the applicant was not apprehended at the spot. The applicant was nominated as an accused in the first information report pursuant to the statements of the co-accused before the police authorities. The said statements are unreliable. No recovery of any prohibited contraband was recovered from the possession of the applicant. Except the confessional statements of the co-accused there is no cogent evidence to link the applicant with the offence. It is next contended that the mandatory provisions of Sections 42, 50, 51 and 52 of N.D.P.S. have not been complied with. Further, the co-accused Sajid, who was arrested at the spot, has been granted bail by this Court vide order dated 20.7.2023 passed in Criminal Misc. Bail Application No. 29445 of 2023. The criminal history of the applicant has been explained in para 17 of the bail application. In the all the cases the applicant has been granted bail. The applicant is in jail since 23.7.2023. 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 counsel for the parties and having perused the record, this Court prima facie finds that the mandate of Chapter V and section 52-A of N.D.P.S. Act has not been followed. There is no independent witness to the alleged recovery. The name of the applicant came into light on the basis of confessional statement of

the co-accused who were arrested at the spot. Except the confessional statements of the co-accused there is no substantive evidence against the applicant. The co-accused Sajid, who was arrested at the spot, has been granted bail by this Court. Further the applicant has presently remained confined for more than three months and 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 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.

6. Let the applicant, **Vadil** 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 tamper with the prosecution evidence;
- ii. the applicant shall not pressurize the prosecution witness;
- iii. the applicant shall appear on each and every date fixed by the trial court.

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 :- 29.11.2023
S.S.