

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45806 of 2023

Applicant :- Farahim

Opposite Party :- State of U.P.

Counsel for Applicant :- Irshad Ahmad

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma,J.

1. Supplementary affidavit, filed by the counsel for the applicant, is taken on record.
2. 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.
3. Heard learned counsel for the applicant, N.K. Sharma, learned AGA for the State-opposite party and perused the record.
4. 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. 90 of 2023, under Section 420 I.P.C. and Section 8/20 N.D.P.S. Act, Police Station- Achoda Kamboh, District- Sambhal during the pendency of trial.
5. Counsel for the applicant submitted that the applicant has been falsely implicated in the instant case. False recovery of 300 gm. Charas has been shown from the applicant. There is no independent witness to the alleged recovery. The recovered substance is below the commercial quantity. The mandatory provisions of Section 42, 50 and 51 of N.D.P.S. have not been complied with. There is no F.S.L. report to establish that the substance recovered is 'Charas'. The criminal history of the applicant has been explained in para 2 of the supplementary affidavit. The applicant is in jail since 8.8.2023. In case, he is enlarged on bail, he will not misuse the said liberty.
6. Learned AGA has opposed the prayer for bail but could not satisfactorily dispute the aforesaid submissions from the record.
7. Having heard learned counsel for the parties and after perusal of the record, this Court prima facie finds that there is no independent witness to the alleged recovery. The recovered substance is below the commercial quantity. Moreover, the applicant has remained

confined for more than three 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.

8. Let the applicant **Farahim**, 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;
- (iii) shall not pressurize the prosecution witnesses.

9. 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 :- 22.11.2023
S.S.