

Court No. - 44

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43338 of 2023

Applicant :- Pradeep @ Pintu

Opposite Party :- State of U.P.

Counsel for Applicant :- Pankaj Sharma

Counsel for Opposite Party :- G.A.

Hon'ble Pankaj Bhatia,J.

1. Heard learned counsel for the applicant as well as learned A.G.A. and perused the record.
2. In terms of the F.I.R., it is stated by the Counsel for the applicant that from the pocket of the applicant 210 gram of Alprazolam powder was allegedly recovered. It is argued that the recovery was not effected in terms of mandate of Section 50 of NDPS Act and the applicant has no criminal history of the offence under the said Act.
3. From the perusal of the F.I.R., it is clear that the search was carried in the presence of the applicant and there is no compliance of Section 50 of the Act.
4. Considering the search being made was contrary to section 50, the prosecution may not be able to establish the charge against the accused in view of the law laid down in the case of Mohd Muslim @ Hussain vs. State (NCT of Delhi) reported in 2023 LiveLaw (SC) 260, couple with the fact that the applicant has no criminal history, the applicant is entitled to be released on bail.
3. The contention of the Counsel for the applicant is that the alleged recovery is contrary and without following the mandate of Section 50 of the NDPS Act. He argues that non following the mandate of Section 50 renders the entire recovery bad in law. He further argues that the alleged recovery is less than commercial quantity. He argues that although 250 grams specified in the Scheduled of the NDPS Act, in view of the definition contained in Section 2(viia), the quantity above 250 grams will only be considered as commercial quantity. The applicant has explained his criminal history. The applicant has no criminal history under NDPS Act. The applicant is in custody since 23.8.2023.
4. Learned A.G.A. vehemently opposed the bail prayer.
5. Considering the fact that the recovery is less than commercial quantity and *prima face*, there being non-compliance of Section 50 of the NDPS Act and the applicant is in custody since 23.8.2023, I am of the view that the applicant is entitled to be released on bail.
6. Accordingly, the bail application is ***allowed***.

7. Let the applicant - Pradeep @ Pintu be released on bail in Case Crime No.315 of 2023, under Sections 21/22 of the NDPS Act, Police Station - Jamunapar, District - Mathura on his furnishing personal bonds and two reliable sureties of the like amount each to the satisfaction of the court concerned with the following conditions:

- (a) The applicant shall execute a bond to undertake to attend the hearings;
- (b) The applicant shall not commit any offence similar to the offence of which he is accused or suspected of the commission; and
- (c) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

Order Date :- 6.11.2023

Irshad