

Court No. - 75

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43349 of 2023

Applicant :- Jogendra

Opposite Party :- State of U.P.

Counsel for Applicant :- Masoom Alam

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. 0272 of 2023, under Sections 8/15/60 of the Narcotic Drugs and Psychotropic Substances Act, 1985, Police Station- Sarsawa, District- Saharanpur, 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 55 kg. 'doda powder' (poppy straw) has been shown in two bags from a Swift Desire Car and on a joint possession of the applicant and one other accused. It is contended that the commercial quantity of the contraband substance is 50 Kg and if the recovery is considered to be joint possession, the recovery would fall below commercial quantity. 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 doda powder. The procedure of sampling is in violation of the provision conferred under the N.D.P.S. Act. It is next contended that in similar offence where the recovery of the substance was more than 144.200 kg, the applicant has been granted bail. The criminal history of the applicant has been explained in Paragraph- 20 of the affidavit. In the said case the applicant has either been acquitted or granted bail. The applicant is in jail since 12.09.2023 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. The inventory of the seized contraband was not certified by the Magistrate, 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 three 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- **Jogendra**, 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 :- 8.12.2023

S.Verma