

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43459 of 2023

Applicant :- Shahjahan

Opposite Party :- State of U.P.

Counsel for Applicant :- Mukesh Joshi

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 Sri V.P. Tripathi, 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. 438 of 2022, under Section 8/20 of N.D.P.S. Act, Police Station- Civil Lines, District- Moradabad, during the pendency of the trial.

4. Counsel for the applicant contends that the applicant has been falsely implicated in the instant case. False recovery of 27 kg. Ganja (20 packets) was shown from the joint possession of five persons in a car. The applicant was a passenger in the car, from which the alleged Ganja was recovered. He is neither owner nor driver of the alleged vehicle. The applicant had no concern with the contraband being ferried in the aforesaid car. There is no independent witness to the recovery. There is nothing on record to demonstrate 'conscious possession' of the applicant. No accurate scientific instruments were used for weighment. 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. There is no FSL report to establish that the substance recovered is Ganja. It is further contended that identically placed co-accused Love Kumar has been granted bail by this Court in Criminal Misc. Bail Application No. 2755 of 2023 vide order dated 20.02.2023. The applicant claims parity. The applicant is in jail since 05.06.2022 having no criminal history and in case she is enlarged on bail, she 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 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. Identically placed co-accused Love Kumar has been granted bail by this Court. Further, the applicant is a lady and has remained confined for more than one year and five months 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, without commenting on merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

7. Let the applicant, **Shahjahan** involved in the aforesaid case be released on bail on her 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 :- 17.11.2023

Lbm/-