

Court No. - 44

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43492 of 2023

Applicant :- Sharukh @ Totla

Opposite Party :- State of U.P.

Counsel for Applicant :- Vishal Agarwal

Counsel for Opposite Party :- G.A.

Hon'ble Pankaj Bhatia,J.

1. Heard learned counsel for the applicant, learned AGA and perused the record.
2. The accused-applicant seeks bail in Case Crime No.218 of 2023 under section 21/22 NDPS Act, P.S. Hathras Kotwali, Hathras, District Hathras
3. The FIR in question was lodged alleging that on the basis of a search carried out, 950 grams of diazepam powder was allegedly recovered from the plastic bag carried by the applicant. The FIR in question itself records that the recovery was not affected in the presence of any gazetted officer or magistrate or even in the presence of any independent witnesses.
4. The contention of the counsel for the applicant is that although the recovery which is from a plastic bag carried by the accused does not require the compliance of section 50 of the NDPS Act, however, it is still incumbent upon the respondents to have shown the recovery in the presence of an independent witness, which has admittedly not been done. He relies upon the recent judgment of the Supreme Court in the case of ***Ranjan Kumar Chadha vs. State of Himanchal Pradesh Criminal Appeal No.2239-2240 of 2011 decided on 06.10.2023*** wherein the principles for search have been summarized after considering the earlier precedents. He argues that the recovery in the present case is clearly contrary to the principles summarized by the Supreme Court. The applicant has no criminal history and is in jail since 20.08.2023.
5. Learned AGA has strongly opposed the bail application by arguing that the quantity recovered is more than the commercial quantity and the test of section 37 has to be cleared.
6. Considering the law as laid down in the case of ***Mohd Muslim @ Hussain v. State (NCT of Delhi); 2023 LiveLaw (SC) 260*** followed in the case of ***Wahid Ali v. Narcotics Control Burear***

Lucknow decided in **Criminal Misc. Bail Application No.13590 of 2021** on **12.07.2023** the first test of section 37 is passed by the applicant which is to the effect that the recovery which is not in accordance with the principles summarized by the Supreme Court, as such, this court can prima-facie form a view that the prosecution may not be able to establish the offence based upon the said recovery.

7. As regards the second of the twin conditions, as the applicant has no criminal antecedents of committing the offence under the NDPS Act, in view of the law laid down in **Criminal Appeal No.523 of 2005 decided in the case of Ranjitsingh Brahmajeetsing Sharma vs. State of Maharashtra**, the second of the twin conditions also stands satisfied.

8. It is made clear that the observations made herein above, are tentative for the purposes of deciding the bail application and would have no affect on the trial, which is to be decided based upon the evidence collected and produced.

9. In view of the reasoning as recorded above and the twin conditions being satisfied, the applicant who is in custody since 20.08.2023 is entitled to be enlarged on bail. Thus the bail application is allowed.

10. Let the applicant **Sharukh @ Totla** be released on bail in aforesaid first information report number subject to his furnishing a personal bond and two reliable sureties each of the like amount 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 :- 31.10.2023

VNP/-