

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43346 of 2023

Applicant :- Anil @ Zahrila

Opposite Party :- State Of U.P Through Principle Secretary ,Home, Govt. Of U.P

Counsel for Applicant :- Brijesh Kumar Prajapati

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 counsel for the applicant and Sri Anupam Anand, learned Brief Holder for the State.

3. By means of the instant bail application, the applicant has prayed to be enlarged on bail in Case Crime No. 222 of 2020, under Sections 21/22 of NDPS Act, Police Station- Mant, District- Mathura, during pendency of the trial.

4. Counsel for the applicant submits that the applicant has been falsely implicated in the present case. False recovery of 430 gm. alprazolam powder has been shown from the possession of the applicant. There is no independent witness to the alleged recovery. The mandatory provisions of Sections 50 and 51 of the N.D.P.S. Act have not been complied with. The sampling has not been done in the presence of Magistrate which is also in violation of Section 52A of the NDPS Act. It is next contended that the applicant is a law abiding citizen who cooperated with the investigations and had joined the trial. The applicant is in jail since 30.10.2020. The applicant never influenced the witnesses and tempered with the evidence. The prosecution proposes to examine six witnesses to bring home the charges. Till date only two prosecution witnesses have been examined. Undue delay caused by the prosecution witnesses has led to pro-longed incarceration of the applicant. The trial is moving at snail's pace and is not likely to conclude early. Inordinate delay in concluding the trial has led to virtually an indefinite imprisonment of the applicant without there being any credible evidence to implicate him in the offence and violates the rights of the applicant to speedy trial. The criminal history of the applicant has been explained in para 2 of the supplementary

affidavit. In case, the applicant is enlarged on bail, he 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 counsel for the parties and having perused the record, I am of the prima facie view that mandate of Chapter V of the NDPS Act has not been followed. There is no independent witness to the recovery. The sampling has not been done in the presence of Magistrate which is required under Section 52A of the NDPS Act. Further the applicant is in jail for more than three years and out of six prosecution witnesses only two has been examined so far. Even the prosecution could not bring on record any material, which would show that the trial has been delayed on account of any fault on the part of the present applicant, more so when 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, **Anil @ Zahrila** involved in the aforesaid case be released on bail on his 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 :- 16.11.2023

Lbm/-