

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44104 of 2023

Applicant :- Jeeshan

Opposite Party :- State of U.P.

Counsel for Applicant :- Rohit Shukla,Rahul Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma,J.

1. Learned A.G.A. 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 Sri Rohit Shukla, learned counsel for the applicant and Sri V.P. Tripathi, learned A.G.A. for the State-opposite party.

3. 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. 304 of 2023, under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, Police Station Hathras Gate, District Hathras during the pendency of trial.

4. Learned counsel for the applicant submits that the applicant has been falsely implicated in the instant case. False recovery of 550 gram Diazepam powder has been shown from 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. There is no F.S.L. report to establish that the substance recovered is 'Diazepam'. While weighing the recovered substance, the police has weighed it along with packing material. The police has deliberately shown the quantity of the alleged narcotics substance marginally higher in order to add gravity to the offence. No accurate scientific instruments were used for weighment. Identically placed co-accused Ahasan @ Gatte has been granted bail by this Court in Criminal Misc. 42492 of 2023 vide order dated 19.10.2023. The applicant claims parity. The criminal history of the applicant has been explained in Paragraph-18 of the affidavit. It has been asserted in paragraph no. 20 and 21 of the affidavit that the applicant is in jail since 23.08.2023 and in case, he 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 submissions from the record.

6. After hearing the rival contentions and after perusal of the

record, this Court prima facie finds that the mandate of Chapter V of the N.D.P.S. Act has not been followed. The sampling has not been done in the presence of the Magistrate which is required under Section 52A of the NDPS Act. There is no independent witness to the alleged recovery. Identically placed co-accused Ahasan @ Gatte has been granted bail by this Court. Further, the applicant has remained confined for more than two 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.

8. Let the applicant- **Jeeshan** involved in the aforesaid case crime, be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the 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.

9. 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 :- 3.11.2023

Lbm/-