

Court No. - 44

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44417 of 2023

Applicant :- Babu Lal Chaurasiya

Opposite Party :- State of U.P.

Counsel for Applicant :- Jai Prakash Singh, Raj Kiran Chaudhary

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 FIR in question was lodged alleging recovery of 130 gm of Alprazolam powder from the pocket of the trousers worn by the applicant. Contention of learned counsel for the applicant is that even as per the seizure memo, which on record, the recovery was not effected in the presence of any gazetted officer or a magistrate, which is clearly in conflict with the mandate of Section 50 of NDPS Act. He places reliance on a judgment of the Supreme Court in the case of ***Mohd Muslim @ Hussain v. State (NCT of Delhi); 2023 LiveLaw (SC) 260.***

3. Learned AGA has opposed the bail application.

4. Considering the fact that *prima-facie*, the recovery is contrary to the mandate of Section 50 NDPS Act, there are reasons to believe that the prosecution against the applicant may not result in any conviction.

5. As the applicant has no criminal antecedent of an offence under the NDPS Act, the second part of Section 37 NDPS Act also stands satisfied, thus, the applicant who is in custody since 22.06.2023 is entitled to be enlarged on bail. In view thereof, the application is ***allowed.***

6. Let the applicant ***Babu Lal Chaurasiya*** be released on bail in FIR No.131 of 2023, under Section 8/22 of NDPS Act, P.S. GRP Cantt., District Varanasi on his furnishing a personal bond with two sureties of Rs.25,000/- each to the satisfaction of 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 :- 30.10.2023

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