

**Court No. - 72**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 44035 of 2023

**Applicant :-** Deepak @ Niranjan

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Surendra Kumar

**Counsel for Opposite Party :-** G.A.

**Hon'ble Krishan Pahal,J.**

1. List has been revised.
2. Heard Sri Ram Kumar holding brief of Sri Surendra Kumar, learned counsel for the applicant as well as Sri Anil Kumar Mishra, learned AGA for the State and perused the material placed on record.
3. By means of the present application, the applicant seeks bail in Case Crime No. 635 of 2023, under Sections 21/22 of Narcotic Drugs and Psychotropic Substances Act, 1985 Police Station- Kosikalan, District- Mathura, during the pendency of trial.
4. As per the prosecution story, 140 gm of Alprazolam alleged to have recovered from the possession of the applicant on 08.08.2023 at about 08:10 AM.
5. Learned counsel for the applicant has stated that he has been falsely implicated in the present case and there is no compliance of the mandatory provisions of Sections 50 and 52-A of the N.D.P.S. Act. He further stated that there is no independent witness to support the prosecution version. As such, the provisions of Section 100 of Cr.P.C. have not followed. Learned counsel has also relied upon the case of ***Arif Khan @ Agha Khan Vs. State of Uttarakhand, (2018) 18 SCC 380*** in which the Apex Court has held that section 50 of the NDPS Act mandatorily required search of the suspect/accused to be carried out in the presence of a magistrate or Gazetted officer, even if such a suspect/accused had waived the right to be taken to a magistrate or Gazetted officer. The applicant is languishing in jail since 08.09.2023 having no criminal history to his credit deserves to be released on bail. In case, the applicant is released on bail he will not misuse the liberty of bail.
6. Per contra learned A.G.A. has vehemently opposed the bail

prayer of the applicant but could not dispute the fact that the applicant has no criminal history.

8. Upon hearing learned counsel for the parties, perusal of record and considering the complicity of accused, severity of punishment as well as totality of facts and circumstances, at this stage without commenting on the merits of the case, I find it a fit case for bail. The bail application is allowed.

10. Let the applicant- **Deepak @ Niranjan**, who is involved in the aforementioned 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 following conditions. Further, before issuing the release order, the sureties be verified.

i. The applicant shall not tamper with the prosecution evidence by intimidating/ pressurizing the witnesses, during the investigation or trial.

ii. The applicant shall cooperate in the trial sincerely without seeking any adjournment.

iii. The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

11. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

12. It is made clear that observations made in granting bail to the applicant shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

**Order Date :- 28.10.2023**

Mohini

**(Krishan Pahal, J.)**