

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44017 of 2023

Applicant :- Rakibur Hassan

Opposite Party :- State of U.P.

Counsel for Applicant :- Mohammad Zunaid Khan

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 learned counsel for the applicant and learned AGA for the State-opposite party.
3. The instant bail application, under Section 439 Cr.P.C., has been filed with a prayer to enlarge the applicant on bail in Case Crime No. 132 of 2023, under Section 8/21 N.D.P.S. Act, Police Station-Dildarnagar, District Ghazipur, during the pendency of trial.
4. Counsel for the applicant submits that the applicant has been falsely implicated in the instant case. False recovery of 300 gm. heroine has been shown from the applicant. There is no independent witness to the recovery. The alleged heroine were weighed along with the packing material. No accurate scientific instruments were used for weighment. The police has deliberately shown the quantity of the alleged narcotics substance marginally higher in order to add gravity to the offence. The mandatory provisions of Sections 42, 50 and 51 of the N.D.P.S. Act have not been complied with. There is no FSL report to establish that the substance recovered is heroine. The applicant is in jail since 20.08.2023 having no criminal history and in case, he is enlarged on bail, he will not misuse the said liberty.
5. Learned AGA has opposed the prayer for bail but could not satisfactorily dispute the aforesaid submissions from the record.
6. Having heard counsel for the parties and having perused the record, I am of the prima facie view that the 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 has remained confined for more than two months and after submission of the charge-sheet there is no hope of early conclusion of trial, 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 the merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

7. Let the applicant **Rakibur Hassan** 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.

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 :- 28.10.2023

Lbm/-