

Court No. - 44

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44586 of 2023

Applicant :- Arjun

Opposite Party :- State of U.P.

Counsel for Applicant :- Ashutosh Yadav, Abhilasha Singh, Shyam Lal

Counsel for Opposite Party :- G.A.

Hon'ble Pankaj Bhatia, J.

1. Heard learned counsel for the applicant as well as learned A.G.A. and perused the record.

2. In terms of the FIR, it was alleged that on the basis of a search carried out on the applicant, from his possession 400 gms. Alprazolam powder was allegedly recovered. The FIR further records that the applicant had stated that he was ready and willing to search by a gazetted officer, however as the gazetted officer expressed his unavailability and on the basis of consent taken from the applicant a search was carried out. He further submits that prima facie the same is contrary to the mandate of Section 50 of the N.D.P.S. Act. He further submits that the applicant has no criminal antecedents to his credit and he is in jail since 16.8.2023, is entitled to be enlarged on bail.

3. Learned A.G.A. vehemently opposed the bail prayer.

5. Considering all the issues as discussed above, I am of the view that the prosecution may not be able to establish the guilt of the applicant. In view of there being a clear non-compliance of the procedure prescribed under Section 50 & Section 51 of the NDPS Act read with Section 100 Cr.P.C., the first condition of the twin conditions prescribed under Section 37 of NDPS Act stands satisfied. As the applicant has no criminal antecedent, in view of the law laid down in the case of *Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra and Anr.*; (2005) 5 SCC 294, the second condition of the twin conditions of Section 37 of NDPS Act also stands satisfied. Apart from the said, the co-accused has been enlarged on bail. Thus, for all the reasons recorded above, the applicant is entitled to be enlarged on bail. In view thereof, the application is allowed.

7. Let the applicant **Arjun** be released on bail in FIR/ Case Crime No. 247 of 2023, under section 21/22 of the N.D.P.S. Act, P.S. Refinery, district-Mathura on his furnishing personal bonds and two reliable sureties of the like amount each to the satisfaction of the 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 :- 7.11.2023

Faridul