

Court No. - 44

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44734 of 2023

Applicant :- Saleem Khan

Opposite Party :- State of U.P.

Counsel for Applicant :- Jitendra Rana

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. The FIR in question was lodged alleging that on the search carried out against as many as five persons including the applicant, opium was recovered from each of the accused. From the accused, it was alleged that two packets were recovered from the body of the applicant, which weight was one kilogram opium.
3. The contention of the Counsel for the applicant is that as the alleged quantity was recovered from the body of the accused, it is mandatory to follow the directions contained in Section 50 of the NDPS Act, failing which, the entire recovery become suspect. It is also argued that one of the co-accused Shangul Nisha has been enlarged on bail by this Court Court vide order dated 26.10.2023 and from whom 3 kg 500 grams of charas was allegedly recovered. It is further argued that the applicant has no criminal antecedents as disclosed in para 19 of the bail application.
4. Learned A.G.A. vehemently opposed the bail prayer by arguing that the recovery is met the commercial quantity and the conditions of Section 37 of the NDPS Act has to be satisfied.
5. The first of the twin condition as specified under Section 37 of the NDPS Act requiring the Court to form a view with regard to the likelihood of prosecution of the applicant; from the perusal of the FIR, it is clear that the recovery was effect from the body of the applicant and admittedly the search was not carried out in the presence of Gazetted Officer or the Magistrate or even independent witnesses, thus, the entire recovery, prima facie, is contrary to the mandate of Section 50 of the NDPS Act and in view of the law laid down by the Hon'ble Supreme Court in the

case of ***Mohd Muslim @ Hussain vs State (NCT of Delhi); 2023 LiveLaw (SC) 260***, the first condition stands satisfied and *prima facie*, on the basis of this search, the prosecution may not be able to establish to charge against the applicant. As regards the second condition, the applicant admittedly has no criminal antecedents, hence, in view of the law laid down by the Hon'ble Supreme Court in the case of ***Ranjitsing Brahmajeetsing Sharma vs. State of Maharashtra & Anr.: (2005) 5 SCC 294***, the second condition also stands satisfied.

6. Considering the reasoning recorded above and the fact that the applicant is in custody since 07.04.2023, I am of the view that the applicant is entitled to be released on bail.

7. Accordingly, the bail application is ***allowed***.

8. Let the applicant ***Saleem Khan*** be released on bail in FIR/ Case Crime No.170 of 2023, under Section 8/18 of the NDPS Act, Police Station Muradnagar, District Ghaziabad on his furnishing personal bonds and two reliable sureties of Rs.25,000/- 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 :- 31.10.2023

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