

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 53900 of 2022

Applicant :- Mallaha

Opposite Party :- State of U.P.

Counsel for Applicant :- Vishal Agarwal, Rajesh Sharma

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma, J.

1. Heard learned counsel for the applicant and Sri Anupam Anand, learned A.G.A. for the State-opposite party.

2. The instant bail application under Section 439 Cr.P.C. has been filed with the prayer to enlarge the applicant on bail in Case Crime No.178 of 2022, under Sections 21 and 22 of the Narcotic Drugs and Psychotropic Substances Act, Police Station Chandapa, District Hathras during the pendency of trial.

3. Learned counsel for the applicant contends that the applicant has been falsely implicated in the instant case. False recovery of 1 kg diazepam powder has been shown from the possession of applicant. There is no independent witness to the alleged recovery. The mandatory provisions of Sections 42, 50, 51 and Section 52-A of the N.D.P.S. Act have not been complied with. It is next contended that the co-accused Smt. Billo, who was arrested along with the applicant and was found carrying 600 gm diazepam powder, has been granted bail by this Court vide order dated 05.01.2023 passed in Criminal Misc. Bail Application No.53895 of 2022. The criminal history of the applicant has been explained in para no. 8 of the rejoinder affidavit. The applicant is in jail since 12.10.2022. The trial is moving at a snail's pace and is not likely to conclude early. The applicant is not responsible for the delay in the trial. Inordinate delay in concluding the trial has led to virtually and indefinite imprisonment of the applicant. In case, he is enlarged on bail, he will not misuse the said liberty.

4. Learned A.G.A. has opposed the prayer for bail but could not satisfactorily dispute the aforesaid submissions from the record.

5. Having heard learned counsel for the parties and after perusal of the record, this Court prima facie finds that provisions of Sections

42, 50, 51 and 52-A of the N.D.P.S. Act have not been followed. There is no independent witness to the alleged recovery. The sampling has not been done in the presence of the Magistrate. The inventory of the seized contraband was also not certified by the Magistrate. Apart from the instant case, the applicant is not involved in any case under the N.D.P.S. Act, as such there are reasonable grounds to believe that applicant shall not indulge himself in other cases of similar nature. Moreover, the applicant has remained confined for more than one year and 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, therefore, without commenting on the merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

6. Let the applicant- **Mallaha**, involved in the aforesaid case, be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of 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.

7. 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 :- 4.12.2023

Amit/-