Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47038 of 2023

Applicant :- Rajesh Sindhi
Opposite Party :- State of U.P.
Counsel for Applicant :- Kuldeep Kumar
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 Sri Vinod Kumar Tiwari, 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. 422 of 2023, under Section 8/20 N.D.P.S. Act, Police Station-Bita-02, District Gautam Budh Nagar, 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 80 Kg. ganja (40 packets) have been shown from a Swift Car. The said car does not belong to the applicant. There is no independent witness to the alleged recovery. There is nothing on record to demonstrate 'conscious possession' of the applicant. The mandatory provisions of Sections 42, 50 and 51 of N.D.P.S. Act have not been complied with. The procedure for sampling provided under Rule 8, 9,10 and 11 of the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022 have been violated. There is no FSL report to establish that the substance recovered is ganja. The applicant is in jail since 17.08.2023 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 mandatory provisions of Sections 42, 50, 51 and 52-A of N.D.P.S. Act have not been complied with. There is no independent witness to the recovery. The sample was not taken from each packet. Thus, the

procedure for sampling provided under Rule 8, 9,10 and 11 of the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022 have been violated. The inventory of seized contraband was not duly certified by the Magistrate. The applicant has no criminal antecedents. Hence, there are reasonable grounds to believe that the applicant shall not indulge himself in other cases of like nature. Further, the applicant has remained confined for more than three 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 **Rajesh Sindhi** 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 :- 1.12.2023
Lbm/-

Digitally signed by :-
LAL BAHADUR MAURYA
High Court of Judicature at Allahabad