

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45573 of 2023

Applicant :- Bhupendra @ Bhuppu

Opposite Party :- State of U.P.

Counsel for Applicant :- Rafeek Ahmad Khan

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma,J.

1. Supplementary affidavit filed by counsel for the applicant is taken on record.
2. Sri Neeraj Kumar Sharma, 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.
3. Heard counsel for the applicant and learned AGA for the State-opposite party.
4. 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. 175 of 2023, under Sections 8/20 N.D.P.S. Act, 1985, Police Station- Ajnar, District- Mahoba, during the pendency of trial.
5. Counsel for the applicant submits that the applicant has been falsely implicated in the present case. False recovery of 1.200 kg ganja has been shown from the applicant, which is below commercial quantity. There is no independent witness to the alleged recovery. The mandatory provisions of N.D.P.S. Act have not been complied with. There is no F.S.L. report to establish that the substance recovered is *ganja*. The criminal history of the applicant has been explained in para nos. 5 to 7 of the supplementary affidavit. The applicant is in jail since 11.09.2023 and in case, he is enlarged on bail, he will not misuse the said liberty.
6. Learned AGA has opposed the prayer for bail but could not satisfactorily dispute the aforesaid submissions from the record.
7. Having heard counsel for the parties and having perused the record this Court prima facie finds that the alleged contraband was below commercial quantity. The mandate of Chapter V of the N.D.P.S. Act has not been followed. There is no independent witness to the recovery. 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 merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

8. Let the applicant **Bhupendra @ Bhuppu**, 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;
- (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 :- 23.11.2023
Sachin Mishra