

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45410 of 2023

Applicant :- Qasim

Opposite Party :- State of U.P.

Counsel for Applicant :- Sadrul Islam Jafri, Asif Ahmed, Sr. Advocate

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma, J.

1. The corrected certified copy of the bail rejection order dated 27.09.2023 has been produced by learned counsel for the applicant. The same is taken on record. On the basis of the said copy, counsel for the applicant submits that he may be allowed to correct the district of the applicant in the array of the parties.
2. Learned A.G.A. has no objection if the applicant is allowed to correct the district.
3. In view of the above, learned counsel for the applicant is permitted to correct the district accordingly in the array of the party during the course of the day.
4. Sri Shashank Shekhar Pandey, learned A.G.A., submits that he has received the instructions and he has no objection if the bail application is decided on merits.
5. Heard learned counsel for the applicant and Sri Shashank Shekhar Pandey, learned A.G.A. for the State-opposite party.
6. 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. 146 of 2023, under Sections 8/20/28/29/60 of the Narcotic Drugs and Psychotropic Substances Act, 1985, Police Station Adarshmandi Shamli, District Shamli during the pendency of trial.
7. Learned counsel for the applicant contends that the applicant has been falsely implicated in the instant case. False recovery of 950 gram Charas has been shown from the applicant. There is no independent witness to the alleged recovery. The mandatory provisions of Sections 42, 50 and 52 of the N.D.P.S. Act have not

been complied with. There is no FSL report to establish that the substance recovered is Charas. The recovered contraband is below commercial quantity. The criminal history of the applicant has been explained in Paragraph-21 of the affidavit. The applicant is in jail since 07.08.2023 and in case he is enlarged on bail, he will not misuse the said liberty.

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

9. Having heard learned counsel for the parties and after perusal of the record, this Court prima facie finds that the mandate of Chapter 5 of the N.D.P.S. Act has not been followed. There is no independent witness to the alleged recovery. The recovered contraband is below the commercial quantity. Moreover, the applicant has remained confined for almost three and half months and after submission of the charge-sheet there is no hope of early conclusion of trial and 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.

10. Let the applicant- Qasim, 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.

11. 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 :- 29.11.2023
SKT/-