

Court No. - 75

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46209 of 2023

Applicant :- Avinash @ Kana

Opposite Party :- State of U.P.

Counsel for Applicant :- Kumar Beenu Singh

Counsel for Opposite Party :- G.A.

Hon'ble Umesh Chandra Sharma,J.

1. Counter affidavit and supplementary affidavit filed today are taken on record.

2. Heard learned counsel for the applicant, learned AGA for the State-opposite party and perused the record.

3. The instant bail application has been filed with a prayer to enlarge the applicant on bail in Case Crime No. 135 of 2023, under Section 8/ 20/29 N.D.P.S. Act, Police Station- Duddhi, District-Sonbhadra, during the pendency of trial.

4. Counsel for the applicant submitted that the applicant has been falsely implicated in the instant case. False recovery of 1.34 quintal 'Ganja' has been shown from the joint possession of the applicant and other accused persons from a truck and a Boleno Car. It is contended that only 34 K.G. 'Ganja' has been recovered from the vehicle the applicant was sitting in with four other accused persons. 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 20 of the affidavit and para 3 of the supplementary affidavit. It is contended that merely on the basis of criminal history, if a bail is liable to be allowed, same should not be rejected and in support of contention, reliance has been placed on ***Prabhakar Tewari Vs. State of U.P. and Another, 2020, LawSuit (SC) 79***. It is lastly contended that the applicant is in jail since 19.09.2023, 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 regard to the submissions made but without commenting on merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

7. Let the applicant, **Avinash @ Kana**, 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 :- 7.12.2023

S.Verma