

Court No. - 72

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45818 of 2023

Applicant :- Shivam Kumar @ Gunday Pasi

Opposite Party :- State of U.P.

Counsel for Applicant :- Sachin Kanaujiya, Arun Kumar Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal, J.

1. List has been revised.
2. Heard Sri Sachin Kanaujiya, learned counsel for the applicant, learned A.G.A. for the State and perused the material placed on record.
3. Applicant seeks bail in Case Crime No.539 of 2022, under Sections 8/20/29 of The Narcotic Drugs And Psychotropic Substances Act, 1985, Police Station- Handiya, District Prayagraj, during the pendency of trial.
4. As per the allegations of the FIR, 10.240 kg. Ganja was recovered from the possession of the applicant alongwith stolen motorcycle and other material by the police on 16.9.2023.
5. Learned counsel for the applicant has argued that the applicant has been falsely implicated in the present case by the police to show good work. In all three cases were foisted on him one at the same time and he had applied for bail in other cases. Learned counsel has stated that there is a previous criminal history of two cases of the applicant, which has been explained in paragraph-12 of the affidavit filed with the bail application. The recovered contraband is below the commercial quantity. Learned counsel has further stated that there is no compliance of mandatory provisions of Section 50 & 52A of the N.D.P.S. Act. There is no F.S.L. report to indicate that the said contraband is Ganja. The applicant is languishing in jail since 17.9.2023. In case, the applicant is released on bail, he will not misuse the liberty of bail.
6. Learned A.G.A. has vehemently opposed the bail application.
7. In *Arif Khan @ Agha Khan v. State of Uttarakhand* (2018) 18 SCC 380, in which the Apex Court held that Section 50 of the NDPS Act mandatorily required search of the suspect/accused to be carried out in the presence of a magistrate

or Gazetted officer, even if such a suspect/accused had waived the right to be taken to a magistrate or Gazetted Officer.

8. Upon hearing learned counsel for the parties, perusal of record and considering the complicity of accused, severity of punishment as well as totality of facts and circumstances, at this stage without commenting on the merits of the case, I find it a fit case for bail. The bail application is **allowed**.

9. Let the applicant- **Shivam Kumar @ Gunday Pasi**, who is involved in aforementioned case 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 following conditions. Further, before issuing the release order, the sureties be verified.

(i) The applicant shall not tamper with evidence.

(ii) The applicant shall remain present, in person, before the Trial Court on dates fixed for (1) opening of the case, (2) framing of charge and (3) recording of statement under Section 313 Cr.P.C. If in the opinion of the Trial Court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the Trial Court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

10. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

11. It is made clear that observations made in granting bail to the applicant shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

Order Date :- 31.10.2023

Vikas

[Krishan Pahal, J.]