

Court No. - 64

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45875 of 2023

Applicant :- Ramchandar Singh

Opposite Party :- N.C.B.

Counsel for Applicant :- Pramod Kumar, Sanjay Kumar Rajbhar

Counsel for Opposite Party :- Ashish Pandey

Hon'ble Siddharth, J.

Despite time granted on 22.11.2023 to learned counsel for the NCB., no counter affidavit filed by the learned counsel for the N.C.B.

Heard learned counsel for the applicant; Shri Vipul Pandey holding brief of Shri Ashish Pandey, learned counsel for the N.C.B. and learned A.G.A.

This bail application has been preferred by the accused-applicant, Ramchandar Singh, who is involved in **Case Crime No. VIII/7/DZU/2018 under Section 22/29 N.D.P.S. Act, Police Station- N.C.B., Delhi, District- Ghasibad.**

Learned counsel for the applicant has submitted that except confessional statement of the applicant under section 67 of NDPS Act there is nothing against the applicant for justifying his implication in this case. Applicant has been falsely implicated in the present case due to ulterior motives. Co-accused, Badar Hayat, has been granted bail by this court vide order dated 1.9.2022 in Criminal Misc. Bail Application No. 6027 of 2020. Co-accused, Krishna Kant Tiwari, has been granted bail by this court vide order dated 5.4.2023 in Criminal Misc. Bail Application No. 20817 of 2021. Trial will take time to conclude.

He further submits that the mandatory provisions contained in sections 41, 50, 52, 53 & 57) of the NDPS Act were not complied with while making the alleged search and recovery. It is further contended that mandatory provision of Section 50 of N.D.P.S Act has not been complied with. At the stage of consideration of bail it cannot be decided whether offer given to the applicant and his consent obtained was voluntary. These are the questions of fact which can be determined only during trial and not at the present stage. In case of *prima facie* non-compliance of mandatory provision of Section 50 the accused is entitled to be released on bail within the meaning of Section 37 of N.D.P.S. Act. The procedure of sampling adopted is in violation of Standing Order / Instruction No.1 of 1989

dated 13.6.1989 issued by the Government of India under Section 52 A of N.D.P.S. Act. The applicant has no criminal history. He is in jail since 17.3.2018 and he undertakes that he will not misuse liberty, if granted.

Learned A.G.A. and learned counsel for the informant have opposed the prayer for bail by contending that the innocence of the applicant cannot be adjudged at pre-trial stage who is involved in supplying contraband, therefore, the applicant does not deserve any indulgence. In case the applicant is released on bail he will again indulge in similar activity. The "reasonable grounds" mentioned in Section 37(1)(b)(ii) of NDPS Act mean something more than *prima facie* ground. It implies substantial probable causes for believing that accused is not guilty of the offence charged and points to existence of such facts and circumstances which are sufficient to hold that accused is not guilty.

However the Apex Court in the Case of ***Union of India vs. Shiv Shankar Keshari, (2007) 7 SCC 798*** has held that the court while considering the application for bail with reference to Section 37 of the Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty.

Considering the facts of the case and keeping in mind the arguments advanced on behalf of the parties, the ratio of the Apex Court's judgment in the case of ***Union of India vs. Shiv Shankar Keshari, (2007) 7 SCC 798***, larger mandate of Article 21 of the constitution of India, the nature of accusations, the nature of evidence in support thereof, the severity of punishment which conviction will entail, the character of the accused-applicant, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interest of the public/ State and other circumstances, but without expressing any opinion on the merits, I am of the view that it is a fit case for grant of bail.

Let applicant be released on bail in the aforesaid case crime number on his furnishing a personal bond and two reliable sureties of the like amount to the satisfaction of the court concerned with the following conditions-

(i) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In

case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code;

(ii) In case, the applicant misuses the liberty of bail and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the Court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

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

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

Identity, and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

Order Date :- 11.12.2023

Atul kr. sri.