Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47533 of 2023

Applicant :- Vikki Alias Vijay
Opposite Party :- State of U.P.
Counsel for Applicant :- Vivek Singh
Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma,J.

1. 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.

2. Supplementary affidavit, filed by the counsel for the applicant, is taken on record.

3. Heard learned counsel for the applicant, Sri Prateek Tyagi, learned A.G.A. for the State and perused the record.

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. 356 of 2023, under Section 8/20/22 of NDPS, Police Station- Transport Nagar, District- Meerut during pendency of the trial.

5. Counsel for the applicant submits that the applicant has been falsely implicated in the instant case. False recovery of 20.400 kg. Ganja has been shown from a Scooty, which does not belong to the applicant. Recovery of 95 gm. smack has also been shown from the personal possession of the applicant. The recovered smack is below the commercial quantity. There is no independent witness to the search, seizure and recovery memo. There is nothing on record to demonstrate 'conscious possession' of the applicant. The mandatory provisions of sections 50, 51 and 52-A of N.D.P.S. Act have not been complied. While weighing the alleged Ganja, the police has weighed it along with packing material. No accurate scientific instruments were used for weighment. The criminal history of the applicant has been explained in para 4 of the supplementary affidavit. In all the cases the applicant has been granted bail. The applicant is in jail since 24.9.2023. In case he is enlarged on bail, he will not misuse the said liberty.

6. Learned A.G.A. 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 mandate of Chapter V and Sections 42, 50, 51 and 52-A of the NDPS Act has not been followed. There is no independent witness to the search, seizure and recovery memo. Inventory of the seized contraband was not duly certified by the Magistrate. Apart from the instant case, the applicant is not involved in any case under the N.D.P.S. Act, as such there are reasonable grounds to believe that the applicant shall not indulge himself in other cases of similar nature. Further the applicant has presently remained confined for more than two months and 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 intimidate the witness, without commenting on the merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

8. Let the applicant, **Vikki Alias Vijay** involved in the aforesaid case be released on bail on his furnishing a personal bond and two sureties each of the like amount to the satisfaction of court concerned on the following conditions that:

i. the applicant shall not tamper with the prosecution evidence;

ii. the applicant shall not pressurize the prosecution witness;

iii. the applicant shall appear on each and every date fixed by the trial court.

9. 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 :- 30.11.2023
S.S.

Digitally signed by :-
SIDDHARTH SRIVASTAVA
High Court of Judicature at Allahabad