

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47811 of 2023

Applicant :- Nihal Ahmad

Opposite Party :- State of U.P.

Counsel for Applicant :- Vinai Shanker 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. Heard learned counsel for the applicant and Sri Neeraj Kumar Sharma, learned AGA for the State-opposite party.

3. 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. 181 of 2021, under Section 8/22 N.D.P.S. Act, Police Station- G.R.P. Varanasi, District Varanasi, during the pendency of trial.

4. Counsel for the applicant submits that the applicant has been falsely implicated in the instant case. False recovery of 110 gm. alprazolam powder has been shown from the applicant. There is no independent witness to the recovery. The alleged alprazolam powder was weighed along with the packing material. No accurate scientific instruments were used for weighment. The police has deliberately shown the quantity of the alleged narcotics substance marginally higher in order to add gravity to the offence. The mandatory provisions of Sections 42, 50 and 51 of the N.D.P.S. Act have not been complied with. The criminal history of the applicant has been explained in para 8 of the affidavit. The applicant is in jail since 21.10.2021. The trial is moving at a snail's pace and is not likely to conclude early. The applicant is not responsible for the delay in the trial. Inordinate delay in concluding the trial has led to virtually and indefinite imprisonment of the applicant without there being any credible evidence to implicate him in the offence and violates the rights of the applicant to a speedy trial. 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 heard counsel for the parties and having perused the record, I am of the prima facie view that the mandatory

provisions of Sections 42, 50 and 51 of the N.D.P.S. Act have not been complied with. The sampling has not been done in the presence of the Magistrate which is required under Section 52A of the NDPS Act. There is no independent witness to the alleged recovery. Although the applicant is warranted in another case under the NDPS Act, the fact remains that in the present case there is non-compliance of mandate of Chapter V of the NDPS 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 remained confined for more than two years 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, without commenting on the merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

7. Let the applicant **Nihal Ahmad** 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; and,

(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 :- 1.12.2023

Lbm/-