

**Court No. - 74**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 46047 of 2023

**Applicant :-** Sankariya Kushwah

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Kamendra Singh Jadaun

**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 learned AGA for the State-respondent.

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. 450 of 2023, under Sections 8/20B N.D.P.S. Act and Section 420 IPC, Police Station Jagdishpura, District Agra, 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 9 Kg. ganja (three bundles) has been shown from a scooty. There is no independent witness to the recovery. There is nothing on record to demonstrate 'conscious possession' of the applicant. The recovered contraband is below commercial quantity. The mandatory provisions of Sections 42, 50 and 51 of the N.D.P.S. Act have not been complied with. There is no FSL report to establish that the substance recovered is ganja. The applicant is in jail since 26.08.2023 having no criminal history and 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 recovered contraband is below commercial quantity. There is no independent witness to the alleged recovery. The mandate of Chapter V of the NDPS Act has not been followed. The sampling has not been done in the presence of Magistrate, which is required under Section 52A of the NDPS Act. The applicant has no criminal antecedents. Further the applicant has remained confined for more than two months and after submission of the charge-sheet 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 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 **Sankariya Kushwah**, involved in the aforesaid 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 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 :- 1.11.2023**

Lbm/-