

Court No. - 44

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46124 of 2023

Applicant :- Bharat

Opposite Party :- State of U.P.

Counsel for Applicant :- Manoj Kumar Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Pankaj Bhatia,J.

1. Heard learned counsel for the applicant as well as learned A.G.A. and perused the record.

2. The FIR in question was lodged alleging that on the basis of a search carried out, a packet held by the applicant was searched, on which, 500 grams of Diazepam power was allegedly recovered from the said packet held by the applicant.

3. The contention of the Counsel for the applicant is that safeguards as clarified by the Supreme Court in the case of ***Ranjan Kumar Chadha vs State of Himanchal Pradesh; Criminal Appeal No(s).2239-2240***, decided on 06.10.2023 have not been complied with. Admittedly the search was not carried out in the presence of a Gazetted Officer or a Magistrate. It is argued that even the Section 50 of the NDPS Act is not complied with in the case of search from polythene, it is incumbent that the mandate of Section 100 of Cr.P.C. should be followed, which has not been done. The applicant has no criminal antecedents. It is further argued that even the sampling has not been done before the Magistrate, which is required in view of the law laid down in the case of ***Simranjit Singh vs State of Punjab; 2023 LiveLaw (SC) 570***.

4. The Counsel for the respondent, on the other hand, argues that the alleged recovery was of commercial quantity and the conditions of Section 37 of the NDPS Act has to be satisfied.

5. Learned A.G.A. vehemently opposed the bail prayer.

6. Considering the law as explained in the case of ***Mohd Muslim @ Hussain vs State (NCT of Delhi); 2023 LiveLaw (SC) 260***, *prima facie*, the recovery although not required to be following the

mandate of Section 50 is essential to be done in compliance of Section 100 of Cr.P.C., even otherwise, the guidelines as explained by the Hon'ble Supreme Court in the case of *Ranjan Kumar Chadha (supra)* are missing in the present case, thus, with regard to the first condition of Section 37, this Court can form a view that prosecution may not be established the offence on the basis of the said recovery. As the applicant has no criminal antecedent, the second of the twin condition also stands satisfied in view of the law laid down in the case of *Ranjitsing Brahmajeetsing Sharma vs. State of Maharashtra & Anr.: (2005) 5 SCC 294* and thus for the reasons recorded above, I am of the view that the applicant is entitled to be released on bail.

7. Accordingly, the bail application is ***allowed***.

8. Let the applicant ***Bharat*** be released on bail in FIR/ Case Crime No.551 of 2023, under Sections 21/22 of the NDPS Act, Police Station Gursahayganj, District Kannauj on his furnishing personal bonds and two reliable sureties of the like amount each to the satisfaction of the court concerned with the following conditions:

(a) The applicant shall execute a bond to undertake to attend the hearings;

(b) The applicant shall not commit any offence similar to the offence of which he is accused or suspected of the commission; and

(c) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

Order Date :- 1.11.2023

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