

Court No. - 44

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46098 of 2023

Applicant :- Lalchand Maurya

Opposite Party :- State of U.P.

Counsel for Applicant :- Rajiv Kumar Mishra, Lal Vijay Singh

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 from the vehicle, contraband of 48 Kg 500 gm. of Ganja was allegedly recovered. In terms of the FIR, it is recorded that the said Ganja was allegedly kept in various bundles details whereof were recorded in the FIR itself. In the said search, 24 bundles were recovered which were numbered from 1 to 12 and 13 to 24, divided into two lots, total weighing 24 Kg. 457 gm. and 24 Kg. 433 gm. respectively. Out of the said 24 bundles, 50 gm. sample was drawn only out of bundle no. 9 and was sent for analysis.

3. In the light of the said averments contained in the FIR, the counsel for the applicant argues that the recovery memo does not bear signature of the Gazetted Officer on all the pages. He further argues that the sample was drawn only out of one packet i.e. bundle no.9 which weighed 2 Kg. 52 gm. which is contrary to the notification No.01 of 1989 which prescribes the minimum quantity of sample to be drawn and also that the sample be drawn from all the lots/bundles so prepared, which has not been done. He further argues that in the worst case scenario, the applicant can be prosecuted only in respect of bundle no.9 from which the sample was drawn which is less than the commercial quantity in the case of Ganja.

4. In any case, he argues that that on the basis of partly sampling, applicant cannot be prosecuted. The applicant has no criminal antecedents.

5. Learned A.G.A., on the other hand, argues that as the recovery is more than the commercial quantity and applicant would be presumed to be in conscious possession of the goods in view of the

law laid down in the case of **Union of India Vs. Nawaz Khan, (2021) 10 SCC 100**, the test of Section 37 N.D.P.S. Act has to be satisfied. The scope of Section 37 N.D.P.S. Act came up for consideration before The Hon'ble Supreme Court in the case of **Mohd Muslim @ Hussain vs State (NCT of Delhi); 2023 LiveLaw (SC) 260**, wherein Supreme Court has observed as under:

"18. The conditions which courts have to be cognizant of are that there are reasonable grounds for believing that the accused is "not guilty of such offence" and that he is not likely to commit any offence while on bail. What is meant by "not guilty" when all the evidence is not before the court? It can only be a prima facie determination. That places the court's discretion within a very narrow margin. Given the mandate of the general law on bails (Sections 436, 437 and 439, CrPC) which classify offences based on their gravity, and instruct that certain serious crimes have to be dealt with differently while considering bail applications, the additional condition that the court should be satisfied that the accused (who is in law presumed to be innocent) is not guilty, has to be interpreted reasonably. Further the classification of offences under Special Acts (NDPS Act, etc.), which apply over and above the ordinary bail conditions required to be assessed by courts, require that the court records its satisfaction that the accused might not be guilty of the offence and that upon release, they are not likely to commit any offence. These two conditions have the effect of overshadowing other conditions. In cases where bail is sought, the court assesses the material on record such as the nature of the offence, likelihood of the accused co-operating with the investigation, not fleeing from justice: even in serious offences like murder, kidnapping, rape, etc. On the other hand, the court in these cases under such special Acts, have to address itself principally on two facts: likely guilt of the accused and the likelihood of them not committing any offence upon release. This court has generally upheld such conditions on the ground that liberty of such citizens have to - in cases when accused of offences enacted under special laws – be balanced against the public interest.

19. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

20. The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused's guilt may be proved. The judgments of this court have, therefore, emphasized that the satisfaction which courts are expected to record, i.e., that the accused may not be guilty, is only prima facie, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation (as held in Union of India vs. Ratan Malik).

Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (ref. Satender Kumar Antil supra). Having 19 (2009) 2 SCC 624 regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail. "

6. Considering the fact that the sampling was done only out of one packet allegedly seized from the applicant, this Court can reasonably form a view that the prosecution may be able to establish the case against the applicant only in respect of the contraband allegedly contained in bundle no.9 which admittedly is less than the commercial quantity, thus, the first of the two conditions prescribed under Section 37 N.D.P.S. Act is positively satisfied in the present case. As regards the second of the twin conditions, the applicant has no criminal antecedents, thus, in view of the law laid down and explained in the case of **Ranjitsing Brahmajeetsing Sharma vs. State of Maharashtra & Anr. (2005) 5 SCC 294**, the second of the twin conditions is also positively satisfied in favour of the applicant. Thus, for the reasons recorded above, the applicant who is in custody since 22.09.2022 is enlarged on bail.

7. Accordingly, the bail application is allowed.

8. Let the applicant **Lalchand Maurya** be released on bail in FIR/ Case Crime No. 117 of 2023, under Section 8/20/60 N.D.P.S. Act, P.S. Naugarh, District Chandauli, on his furnishing personal bonds and two reliable sureties of the like amount 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/S.A.