

Court No. - 44

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46703 of 2023

Applicant :- Dheeraj @ Dheeru

Opposite Party :- State of U.P.

Counsel for Applicant :- Pankaj Sharma, Prashant Sharma

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 the recovery of **525 gms.** Diazepam powder was made from the applicant's bag.
3. The contention of the Counsel for the applicant is that the recovery is below the commercial quantity. He further submits that the search was carried out by police and no gazetted officer was called. He further argues that the recovery was not in accordance with the mandate of Section 50, Section 51 of NDPS Act read with Section 100 Cr.P.C. He also submits that it is also recorded in the FIR that applicant had accepted that the search was carried out by the police party and the gazetted officer was not called. He lastly submits that the applicant, who is having no criminal history in his credit and he is in jail since 20.5.2023, is entitled to be enlarged on bail.
4. Learned counsel for the applicant places strong reliance on the judgment of the Supreme Court in the case of ***Mohd Muslim @ Hussain v. State (NCT of Delhi); 2023 LiveLaw (SC) 260 as well as in the case of Rabi Prakash v. The State of Odisha decided in Special Leave to Appeal (Crl.) No(s).4169 of 2023.*** She also places reliance on the order passed by this Court in the case of ***Wahid Ali v. Narcotics Control Burear Lucknow decided in Criminal Misc. Bail Application No.13590 of 2021 on 12.07.2023.***
5. Learned counsel for the applicant further argues that even as per the FSL report, samples were not sent from all the packets allegedly found in possession of the applicant and only sample was drawn from one of the said packets and thus, the same is not in accordance with the standing orders. She further argues that the samples were not drawn in the presence of the Magistrate, which is

a requirement under Section 52A of the NDPS Act and thus, for all the said reasons, the prosecution may not be able to establish the guilt during trial and thus, the applicant should be enlarged on bail.

4. Learned A.G.A. vehemently opposed the bail prayer and submitted that the recovery affected from the applicant is more than commercial quantity.

5. Considering the fact that on the basis of material, the prosecution has not been able establish the offence against the applicant, which is on the basis of recovery, prima face, there being non-compliance of Section 50 of the NDPS Act and the applicant is in custody since 20.5.2023, I am of the view that the applicant is entitled to be released on bail.

6. Accordingly, the bail application is allowed.

7. Let the applicant **Dheeraj @ Dheeru** be released on bail in FIR/ Case Crime No. 146 of 2023, under Section 21/22 of N.D.P.S. Act, P.S. Sasni, district-Hathras 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 :- 2.11.2023

Faridul