

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46830 of 2023

Applicant :- Rahul Agrahari

Opposite Party :- State of U.P.

Counsel for Applicant :- Upendra Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma,J.

1. Sri V.P. Tripathi, learned A.G.A. 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 A.G.A. for the State-opposite party.

3. The instant bail application under Section 439 Cr.P.C. has been filed with the prayer to enlarge the applicant on bail in Case Crime No. 312 of 2023, under Sections 8/22/23 of the Narcotic Drugs and Psychotropic Substances Act, Police Station Shohratgarh, District Siddharth Nagar during the pendency of trial.

4. Learned counsel for the applicant submits that the applicant has been falsely implicated in the instant case. The applicant is Proprietor of Mahi Medical Store, Khunuwa Bazar, Chetra, Siddharth Nagar. The applicant has a licence to sell, stock or exhibit for sale or distribute by retail drugs. The applicant has relevant documentation in his possession with regard to the alleged recovery of drugs. Recovery of Capsule Proxyco- spas and Tablet Nitravet has been shown from the applicant. The mandatory provisions of the N.D.P.S. Act have not been complied with. There is no F.S.L. report to establish that the substance recovered is prohibited contraband. The applicant is in jail since 03.09.2023 having no criminal history and in case he is enlarged on bail, he will not misuse the said liberty.

5. Learned A.G.A. has opposed the prayer for bail but could not satisfactorily dispute the aforesaid submissions from the record.

7. After hearing the rival contentions and after perusal of the record, this Court prima facie finds the applicant is the proprietor of a medical shop. The mandatory provisions of the

N.D.P.S. Act have not been complied with. There is no F.S.L. report to establish that the substance recovered is prohibited contraband. Inventory of the seized contraband was not duly certified by the Magistrate. The applicant has no criminal antecedents. Further, the applicant has remained confined for more than two and half 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 merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

8. Let the applicant- Rahul Agrahari, 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.

9. 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 :- 23.11.2023

SKT/-