

Court No. - 44

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47192 of 2023

Applicant :- Sameer Malik

Opposite Party :- State of U.P.

Counsel for Applicant :- S.P.S. Chauhan, Smt. Meenakshi Chauhan

Counsel for Opposite Party :- G.A.

Hon'ble Pankaj Bhatia, J.

1. Heard Sri S. P. S. Chauhan and Sri Sukhendra Singh the counsel for the applicant, learned AGA and perused the record.
2. The accused-applicant seeks bail in Case Crime No.840 of 2023 under sections 8/20/25/29/60(3) of NDPS Act, P.S. Kurwali, District Mainpuri.
3. The FIR in question was lodged alleging that two persons travelling on a motorcycle were carrying a bag. On being challenged, one of the persons fled with the motorcycle and number could not be noted. On pointing out of the applicant, a bag containing thirty nine kilogram four hundred grams of Ganja was allegedly recovered in six packets weighing differently. The FIR further records that out of the total six packets, various samples were drawn and a composite sample of 500 grams was prepared.
4. In the light of the said averment, the counsel for the applicant argues that the recovery was not in the presence of any independent witness, the guidelines as prescribed by the Supreme Court in the case of ***Ranjan Kumar Chadha vs. State of Himanchal Pradesh Criminal Appeal No.2239-2240 of 2011 decided on 06.10.2023*** were not complied with as no option of getting search was extended to the applicant in writing. It is further argues that manner of drawing sample is also contrary to the Standing Order No.1 of 1989 and there is violation of Section 52-A of the NDPS Act and the applicant has no criminal antecedents and thus, the applicant should be enlarged on bail.
5. Learned AGA on the other hand, states that the recovery was effected in the presence of a gazetted officer as is noticed in the FIR itself and thus, there was a compliance of the mandate of Section 50 of the NDPS Act, which was otherwise not required as the recovery was not effected from the person and was in a bag which was in conscious possession of the applicant.

6. The counsel for the applicant in rejoinder states that although there is reference of the presence of the gazetted officer, no signatures were effected thereupon, as such, the same is bad in law and he places reliance on the order passed by this Court in ***Criminal Misc. Bail Application No.13590 of 2021 (Wahid Ali vs. NCB, Lucknow)***.

7. Considering the said submissions made at the bar, primarily, in terms of the FIR, the recovery was effected from a bag, the manner of drawing samples is clearly not in compliance with the mandatory instructions issued in the Standing Order No. 1/1989, no separate samples have been drawn from each of the packets allegedly recovery in the bag, the signature of the sampling officer ought to have been present on the search memo, which are not present, which is also contrary to the provisions of the Cr.P.C., there are no independent witnesses to the search, as such, the first test of the twin test prescribed under section 37 of the Act are satisfied in the present case in view of the law as explained in the case of ***Wahid Ali (supra)***. As regards the second test, as the applicant has no criminal antecedents of any offence under the NDPS Act, in view of the law laid down in the case of ***Ranjitsingh Brahmajeetsing Sharma vs. State of Maharashtra, (2005) 5 SCC 294***, the second test is also satisfied.

8. Thus in view of the reasoning recorded above, the applicant is entitled to be enlarged on bail, as such, the bail application is allowed.

9. Let the applicant ***Sameer Malik*** be released on bail in aforesaid first information report number subject to his furnishing a personal bond and two reliable sureties each 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 :- 6.11.2023

VNP/-