

Court No. - 72

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48005 of 2023

Applicant :- Vishnu Sharma

Opposite Party :- State of U.P.

Counsel for Applicant :- Hitesh Pachori

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. Heard learned counsel for the applicant and Sri Anil Kumar Singh, learned A.G.A. for the State and perused the material placed on record.
2. Applicant seeks bail in Case Crime No. 0184 of 2023, U/S 8/21/60 of The Narcotic Drugs And Psychotropic Substances Act, 1985 and 41/102 Cr.P.C. and 420, 414 IPC, Police Station- Bah, District-Agra, during the pendency of trial.
3. As per the allegations of the FIR, the applicant and co-accused person Pawan were arrested by police on 28.8.2023 alongwith a stolen motorcycle and from his personal search, 120 grams of alprazolam powder was recovered.
4. Learned counsel for the applicant has argued that the applicant is absolutely innocent and has been falsely implicated in the present case with a view to cause unnecessary harassment and to victimize him. Learned counsel has stated that there is no compliance of provision of Sections 50 and 52-A of the N.D.P.S. Act.
5. Several other submissions have been made on behalf of the applicant to demonstrate the falsity of the allegations made against him. The circumstances which, as per counsel, led to the false implication of the applicant have also been touched upon at length.
6. Learned A.G.A. has vehemently opposed the bail application on the ground that the recovery of the contraband article is of commercial quantity. He has also stated that there is criminal history of one case assigned to the applicant.
7. Learned counsel for the applicant has stated that he has explained the criminal history of the applicant in paragraph 8 of the affidavit. The applicant is languishing in jail since 28.8.2023. In case, the applicant is released on bail, he will not misuse the liberty of bail. In case, the applicant is released on bail, he will not misuse the liberty of bail.
8. In *Arif Khan @ Agha Khan v. State of Uttarakhand* (2018) 18 SCC 380, in which the Apex Court held that Section 50 of the NDPS Act mandatorily required search of the suspect/accused to be carried out in the presence of a magistrate or Gazetted officer, even if such a suspect/accused had waived the right to be taken to a magistrate or Gazetted Officer.
9. The Apex Court in the Case of *Union of India vs. Shiv Shankar Keshari*,

(2007) 7 SCC 798 has held that the court while considering the application for bail with reference to Section 37 of the Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty.

10. Considering the facts of the case and keeping in mind, the ratio of the Apex Court's judgment in the case of *Union of India vs. Shiv Shankar Keshari (supra)* larger mandate of Article 21 of the constitution of India, the nature of accusations, the nature of evidence in support thereof, the severity of punishment which conviction will entail, the character of the accused-applicant, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interest of the public/ State and other circumstances, but without expressing any opinion on the merits, I am of the view that it is a fit case for grant of bail.

11. Let the applicant- **Vishnu Sharma**, who is involved in aforesaid case crime number 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 following conditions. Further, before issuing the release order, the sureties be verified.

(i) The applicant shall not tamper with evidence.

(ii) The applicant shall remain present, in person, before the Trial Court on dates fixed for (1) opening of the case, (2) framing of charge and (3) recording of statement under Section 313 Cr.P.C. If in the opinion of the Trial Court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the Trial Court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

12. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

13. It is made clear that observations made in granting bail to the applicant shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

(Justice Krishan Pahal)

Order Date :- 21.11.2023

Shalini