

Court No. - 44

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47677 of 2023

Applicant :- Kanha

Opposite Party :- State of U.P.

Counsel for Applicant :- Rahul Kumar Sharma

Counsel for Opposite Party :- G.A.

Hon'ble Pankaj Bhatia,J.

1. Heard learned counsel for the applicant, learned AGA and perused the record.
2. The accused-applicant seeks bail in Case Crime No.236 of 2022 under section 21/22 NDPS Act, P.S. Hathras Junction, District Hathras.
3. The FIR was lodged alleging that on the basis of a search carried out, from the pocket of the applicant, 610 grams of diazepam powder was allegedly recovered, out of which fifty grams was sent for analysis.
4. The counsel for the applicant argues that there was non-compliance of section 50 of the NDPS Act, as the powder was allegedly recovered from the pocket of the applicant. He further argues that the applicant has no criminal history of the offence under the NDPS Act and even the sampling was not done in the presence of the magistrate.
5. The counsel for the State, on the other hand, argues that the recovery is more than the commercial quantity and the applicant has waived of their rights of getting inspected in the presence of a gazetted officer.
6. Considering the said submissions, prima-facie, the mandate of section 52 of the Act and even the guidelines of 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 followed, there was no independent witness to the alleged recovery, the sampling was not done in terms of the mandate of Section 52-A of the Act, thus, on these lacunae, the prosecution may not be able to carry the charge against the applicant, as such, the first condition specified under section 37 is satisfied. As the applicant has no criminal antecedents of the offence under NDPS Act, the second of the twin condition is also

satisfied, thus, the applicant who is in custody since 14.08.2022 is entitled to be enlarged on bail, as such the bail application is allowed.

5. Let the applicant ***Kanha*** 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 :- 8.11.2023

VNP/-