

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48142 of 2023

Applicant :- Sunil @ Guddu

Opposite Party :- State of U.P.

Counsel for Applicant :- Karuna Nidhi Pandey, Babhru Vahan Singh

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma, J.

1. Sri Anupam Anand, learned Brief Holder for the State, submits that he has received the instructions and he has no objection if the bail application is decided on merits.

2. Heard learned counsel for the applicant and Sri Anupam Anand, learned Brief Holder 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. 105 of 2023, under Sections 8/20 of the Narcotic Drugs and Psychotropic Substances Act, 1985, Police Station Chiraiyakot, District Mau during the pendency of trial.

4. Learned counsel for the applicant contends that the applicant was not arrested at the spot and has been falsely implicated in the instant case. The name of the applicant was disclosed on the confessional statement of co-accused Shahabuddin, who was arrested at the spot. False recovery of 51.800 kg. Ganja (4 packets and 1 sack) has been shown from a vehicle. It is contended that the applicant has no concern with the said vehicle. There is no independent witness to the alleged recovery. The mandatory provisions of Sections 41, 42, 43 and 50 of the N.D.P.S. Act have not been complied with. The procedure of sampling is in violation of the provisions of Rules 8, 9, 10 and 11 of the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022. There is no FSL report to establish that the substance recovered is Ganja. At this stage there is no cogent evidence to link the applicant with the offence. It is next contended that co-accused Shahabuddin, who was arrested at the spot, has been granted bail by this Court in Criminal Misc. Bail Application No. 36075 of 2023, Shahabuddin v. State of U.P., vide order dated 18.09.2023. The applicant claims parity. The applicant is in jail since 20.09.2023 having no criminal history and in case he is

enlarged on bail, he will not misuse the said liberty.

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

6. Having heard learned counsel for the parties and after perusal of the record, this Court prima facie finds that the mandate of Sections 42, 50 and 51 of the N.D.P.S. Act has not been followed. There is no independent witness to the alleged recovery. The procedure of sampling adopted is in violation of Rules 8, 9, 10 and 11 of the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022. Sampling has not been done in presence of the Magistrate which is required under Section 52-A of the NDPS Act. Apart from the statement of co-accused Shahabuddin there is no material against the applicant. Co-accused Shahabuddin has been granted bail by this Court. The applicant has no criminal history apart from this case. Hence, there are reasonable grounds to believe that the applicant shall not indulge himself in other cases of like nature. Moreover, the applicant has remained confined for almost two months and after submission of the charge-sheet there is no hope of early conclusion of trial and 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, therefore, without commenting on the merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

7. Let the applicant- Sunil @ Guddu, involved in the aforesaid case, be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of 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.

8. 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 :- 30.11.2023

SKT/-