

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48439 of 2023

Applicant :- Aashish Singh

Opposite Party :- State of U.P.

Counsel for Applicant :- Mohammad Zafar Yab Khan

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma,J.

1. Heard learned counsel for the applicant and Shri V.P. Tripathi, learned AGA for the State-opposite party.

2. The instant bail application, under Section 439 Cr.P.C., has been filed with a prayer to enlarge the applicant on bail in Case Crime No.161 of 2023, under Section 8/21 N.D.P.S. Act and Section 411, 413 I.P.C., Police Station- Mishrauliya, District- Siddharth Nagar, during the pendency of trial.

3. Counsel for the applicant submits that the applicant has been falsely implicated in the instant case. False recovery of 80 gm. smack and five mobile phones has been shown from the applicant. There is no independent witness to the alleged recovery. The alleged contraband is below the commercial quantity. The mandatory provisions of Sections 42, 50, 51 and 52A of N.D.P.S. Act have not been complied with. The criminal history of the applicant has been explained in para nos. 20 to 26 of the affidavit and para no. 2 of the supplementary affidavit. The applicant is in jail since 07.09.2023 and in case, he is enlarged on bail, he will not misuse the said liberty.

4. Learned AGA has opposed the prayer for bail but could not satisfactorily dispute the aforesaid submissions from the record.

5. Having heard counsel for the parties and having perused the record, I am of the prima facie view that the mandatory provisions of Sections 42, 50, 51 and 52A of N.D.P.S. Act have not been complied with. There is no independent witness to the alleged recovery. The alleged contraband was below commercial quantity. Apart from the instant case, the applicant is not involved in any case under the N.D.P.S. Act, as such there are reasonable grounds to believe that the applicant shall not indulge himself in other cases

of similar nature. Further, the applicant has remained confined for more than three 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 the merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

6. Let the applicant **Aashish Singh** involved in the aforesaid case crime be released on bail on his furnishing a personal bond and two heavy 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.

7. 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 :- 6.12.2023

Sharad/-