

Court No. - 72

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48747 of 2023

Applicant :- Laxman Yadav

Opposite Party :- State of U.P.

Counsel for Applicant :- Ali Hasan, Istiyaq Ali

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal, J.

1. List has been revised.
2. Heard Sri Istiyaq Ali, learned counsel for the applicant, Sri Deepak Kumar Singh, learned A.G.A. for the State and perused the material placed on record.
3. Applicant seeks bail in Case Crime No.379 of 2023, under Section 8/21/29 of The Narcotic Drugs And Psychotropic Substances Act, 1985, Police Station- Bitharichainpur, District Bareilly, during the pendency of trial.
4. As per the allegations of the FIR, 250 grams of smack is stated to have been recovered from the possession of the applicant by the police on 21.09.2023.
5. 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. The contraband falls within the category of below the commercial quantity as it is mentioned in the Act that anything above 250 grams shall be considered commercial quantity, as such the rigours of Section 37 of N.D.P.S. Act could not apply to the present case. Learned counsel for the applicant has stated that there is no compliance of mandatory provision of Section 52-A of the N.D.P.S. Act. The applicant is languishing in jail since 22.09.2023. In case, the applicant is released on bail, he will not misuse the liberty of bail.
6. Learned A.G.A. has vehemently opposed the bail application.
7. 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.

8. Upon hearing learned counsel for the parties, perusal of record and considering the complicity of accused, severity of punishment as well as totality of facts and circumstances, at this stage without commenting on the merits of the case, I find it a fit case for bail.

9. Let the applicant- **Laxman Yadav**, who is involved in aforementioned case 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 file an undertaking to the effect that he shall not seek any adjournment on the date fixed for evidence when the witnesses are present in Court. In case of default of this condition, it shall be open for the Trial Court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(ii) The applicant shall remain present before the Trial Court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the Trial Court may proceed against him under Section 229-A IPC.

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C., may be issued and if applicant fails to appear before the Court on the date fixed in such proclamation, then, the Trial Court shall initiate proceedings against him, in accordance with law, under Section 174-A IPC.

(iv) 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.

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

11. 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.

Order Date :- 23.11.2023

Ravi Kant

(Krishan Pahal, J.)