

Court No. - 44

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 49065 of 2023

Applicant :- Shyam Narayan Yadav

Opposite Party :- State of U.P.

Counsel for Applicant :- Manoj Yadav

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. In terms of the FIR, it was alleged that on the basis of information, a search was conducted over the vehicle and from the vehicle in question, Ganja weighing 35 kg 200 gm was recovered. It is further recorded that one of the persons who was sitting in the vehicle in question fled from the spot whereas the two persons including the applicant, were apprehended on the basis of 'conscious possession' in the vehicle in which they were sitting.
3. Contention of counsel for the applicant is that although the FIR in question records the presence of a Gazetted Officer, however, the Gazetted Officer has not signed the recovery memo and further there were no independent witnesses to the search. In the light of the said, he argues that the material to form a view of 'conscious possession' of Ganja from both the persons sitting in the vehicle including the applicant, cannot be said to be *prima-facie* made out. He further argues that although the presence of the Gazetted Officer is shown, non-signing of the recovery memo is contrary to the law as analyzed by this Court in the case of **Wahid Ali v. Narcotics Control Bureau Lucknow; Criminal Misc. Bail Application No.13590 of 2021** decided on **12.07.2023**. He argues that the applicant has no criminal antecedent and is in custody since 21.10.2023.
4. Learned AGA, on the other hand, opposes the bail application based upon the records and argues that the case diary itself records that the Gazetted Officer was called and was present during search. He further argues that the mandate of Section 37 NDPS Act and the twin conditions prescribed therein have to be satisfied.
5. Considering the submissions made at the Bar, in terms of the FIR, the alleged recovery and the 'conscious possession' shown against the three persons is said to be in the vehicle, however, the

search and the recovery are not in the presence of any independent witnesses; the search memo has not been signed by the Gazetted Officer who was allegedly present during the time of the search which was *prima-facie* contrary to the mandatory provisions contained in the Code of Criminal Procedure and as analyzed by this Court while deciding the bail application of **Wahid Ali (supra)**, thus, *prima-facie*, based upon the recovery, with the defects as highlighted above, the prosecution may not be able to establish the offence. The second of the twin conditions also stands satisfied in view of the fact that the applicant has no criminal antecedent. As such, the applicant is entitled to be enlarged on bail. In view thereof, the application is **allowed**.

6. Let the applicant **Shyam Narayan Yadav** be released on bail in FIR No.231 of 2023, under Section 8/20/60 of NDPS Act, P.S. Bansdih Road, District Ballia on his furnishing a personal bond with two sureties of the like amount each to the satisfaction of 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 :- 20.11.2023
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