

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 49213 of 2023

Applicant :- Pratap Singh

Opposite Party :- State of U.P.

Counsel for Applicant :- Sunil Kumar Upadhyay, Bhuwan Chandra Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma, J.

1. Supplementary affidavit filed by the counsel for the applicant, is taken on record.
2. Learned AGA for the State submits that the instructions have been received and he has no objection in case the bail application is decided on merits.
3. Heard learned counsel for the applicant and Sri Shashank Shekhar, learned AGA for the State-opposite party.
4. 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. 1071 of 2023, under Section 8/20 N.D.P.S. Act, Police Station-Highway, District Mathura, during the pendency of trial.
5. Counsel for the applicant submits that the applicant has been falsely implicated in the instant case. False recovery of 20.300 Kg. ganja (ten plastic bundles) has been shown from the applicant. There is no independent witness to the recovery. No accurate scientific instruments were used for weighment. The police has deliberately shown the quantity of the alleged narcotics substance marginally higher in order to add gravity to the offence. The mandatory provisions of Sections 42, 50 and 51 of the N.D.P.S. Act have not been complied with. The procedure for sampling provided under Rule 8, 9, 10 and 11 of the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022 have been violated. There is no FSL report to establish that the substance recovered is ganja. The criminal history of the applicant has been explained in para 3 of the supplementary affidavit. The applicant is in jail since 18.10.2023 and in case, he is enlarged on bail, he will not misuse the said liberty.
6. Learned AGA has opposed the prayer for bail but could not

satisfactorily dispute the aforesaid submissions from the record.

7. 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 52-A of N.D.P.S. Act have not been complied with. There is no independent witness to the recovery. The sample was not taken from each packet. Thus, the procedure for sampling provided under Rule 8, 9, 10 and 11 of the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022 have been violated. The inventory of seized contraband was not duly certified by the Magistrate. Apart from the instant case, the applicant is not involved in any case under the NDPS 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 one and half month 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.

8. Let the applicant **Pratap Singh** involved in the aforesaid case crime 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 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.

9. 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

Lbm/-