Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 49538 of 2023

Applicant :- Saddam @ Sada
Opposite Party :- State of U.P.
Counsel for Applicant :- A.Z.Khan,Mohd. Naushad,Noor Ahmed,Rajiv Sisodia
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.381 of 2023, under Section 8/20 N.D.P.S. Act and 411 IPC, Police Station- Nakur, District- Saharanpur, 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 370 gm. charas, has been shown from the possession of the applicant. The alleged contraband is below the commercial quantity. There is no independent witness to the alleged recovery. The mandatory provisions of Sections 41, 50, 52-A of N.D.P.S. Act have not been complied with. There is no FSL report to establish that the substance recovered is charas. The criminal history of the applicant has been explained in para 8 of the affidavit. The applicant is in jail since 25.10.2023 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 under Sections 42, 50, 52-A of the NDPS Act have been violated. There is no independent witness to the alleged recovery. The recovered contraband is below commercial quantity. Further, the applicant has remained confined for more than one 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.

6. Let the applicant **Saddam @ Sada** 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.

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/-

Digitally signed by :-
SHARAD KUMAR SRIVASTAVA
High Court of Judicature at Allahabad