

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 49680 of 2023

Applicant :- Surendra Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Uday Narain Singh

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma,J.

1. 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.

2. Heard learned counsel for the applicant and Sri Vinod Kumar Tiwari, learned AGA for the State-opposite party.

3. 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. 117 of 2023, under Section 8/20/60 N.D.P.S. Act, Police Station- Naugarh, District Chandauli, during the pendency of trial.

4. Counsel for the applicant submits that the applicant has been falsely implicated in the instant case. False recovery of 48 Kg. 890 gm. ganja (24 bundles) has been shown from a vehicle. The said vehicle does not belong to the applicant. There is no independent witness to the alleged recovery. There is nothing on record to demonstrate 'conscious possession' of the applicant. The mandatory provisions of Sections 42, 50 and 51 of N.D.P.S. Act have not been complied with. Sample was taken from a single packet and was sent to the Forensic Science Laboratory. 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. It is next contended that identically placed co-accused Lalchand Maurya has been granted bail by this Court vide order dated 01.11.2023 passed in Criminal Misc. Bail Application No. 46098 of 2023. The applicant claims parity. The applicant is in jail since 22.09.2023 having no criminal history and in case, he is enlarged on bail, he will not misuse the said liberty.

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

6. 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. Sample was taken from a single 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. The applicant has no criminal antecedents. Hence, there are reasonable grounds to believe that the applicant shall not indulge himself in other cases of like nature. Further, the applicant has remained confined for more than two 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.

7. Let the applicant **Surendra Kumar** 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.

8. 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 :- 13.12.2023

Lbm/-