

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 49603 of 2023

Applicant :- Mustak

Opposite Party :- State of U.P.

Counsel for Applicant :- Kartikey Singh

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma,J.

1. Supplementary affidavit filed by learned counsel for applicant, is taken on record.
2. Shri Anupam Anand learned brief holder 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 Anupam Anand learned brief holder 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.725 of 2023, under Section 21/22 N.D.P.S. Act, Police Station-Kosi Kalan, 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 120 gm. Alprazolam powder has been shown from the possession of the applicant. There is no independent witness to the alleged recovery. 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 FSL report to establish that the substance recovered is alprazolam powder. While weighing the recovered substance, the police has weighed it along with packing material. The police has deliberately shown the quantity of the alleged narcotics substance marginally higher in order to add gravity to the offence. No accurate scientific instruments were used for weighment. The criminal history of applicant has been explained in para nos. 3 & 4 of the supplementary affidavit and para no. 18 of the affidavit. The applicant is in jail since 14.10.2023 and in case, he is enlarged on bail, he will not misuse the said liberty.

6. Learned brief holder for State 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 alleged recovery. 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 like nature. 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.

8. Let the applicant **Mustak** 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

Sharad/-