

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 53289 of 2023

Applicant :- Sushil Patel

Opposite Party :- State of U.P.

Counsel for Applicant :- Pradeep Kumar Sharma, Amrita Singh, Sanjay Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma, J.

1. Sri Prateek Tyagi, learned A.G.A. 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 counsel for the applicant and learned A.G.A. 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. 93 of 2023, under Sections 8/20 of N.D.P.S. Act, Section 3/25 of Arms Act and Sections 419, 420 and 468 of I.P.C., Police Station- Raipura, District- Chitrakoot during the pendency of trial.

4. Counsel for the applicant submitted that the applicant has been falsely implicated in the instant case. False recovery of 25 kg (25 packets) Ganja has been shown from a car, which does not belong to the applicant. The car was driven by the co-accused, Parmeshwar Sahu. There is nothing on record to demonstrate 'conscious possession' of the applicant. False recovery of a country made pistol and two live cartridges has also been shown from the personal possession of the applicant. There are no independent witnesses to the recovery. Recovery of a mobile phone has also been shown from the applicant. The said mobile phone belongs to the applicant. The mandatory provisions of Sections 42, 50, 51 and 52A of N.D.P.S. Act have not been complied with. Sample was taken from a single packet. The procedure of sampling prescribed in Rule 8, 9, 10 (1), 12 and 13 of the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022 have been violated. The applicant is in jail since 21.08.2023, having no criminal history and in case he is enlarged on bail, he will not misuse the said liberty.

5. Learned A.G.A. 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 this Court prima facie finds that the mandate of Sections 42, 50, 51 and 52A of the N.D.P.S. Act has not been followed. There is no independent witness to the alleged recovery. Sample was not taken from each packet. Sample was taken from one packet and was sent to the Forensic Science Laboratory. Thus, the procedure of sampling adopted is in violation of Rules 8, 9, 10 and 11 of the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022. The inventory of the seized contraband was also not 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. Moreover, the applicant has remained confined for more than three months and 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 merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

7. Let the applicant- **Sushil Patel**, 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;
- (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 :- 12.12.2023
Sachin Mishra