

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 50449 of 2023

Applicant :- Suryabhan Yadav

Opposite Party :- State of U.P.

Counsel for Applicant :- R.K.Paramhans Singh

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. The instant bail application has been listed today before this Bench as nominated case after the order passed by Hon'ble The Acting Chief Justice dated 05.12.2023.

2. Heard Sri P.K.P. Singh, learned counsel for the applicant and Sri Jhamman Ram, learned AGA-I for the State.

3. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 293 of 2022, under Sections 08/20/22/25 N.D.P.S. Act, Police Station Sidhari, District Azamgarh during pendency of the trial.

4. As per prosecution case from the possession of applicant and co-accused Ram Nayan and Shiv Prakash Vishwakarma @ Chhotu total 124 Kg. Ganja was recovered in 49 packets from the house of co-accused Rakesh Yadav @ Sonu.

5. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and baseless and actually nothing was recovered from the possession of applicant. He further submits that admittedly recovery was made from the house of co-accused Rakesh Yadav @ Sonu.

6. He further submits that bail application of co-accused Rakesh Yadav @ Sonu has already been allowed by the co-ordinate Bench of this Court vide order dated 03.05.2023 passed in Criminal Misc. Bail Application No. 58445 of 2022. He further submits that bail application of co-accused Shiv Prakash Vishwakarma @ Chhotu has already been allowed by this Court on 09.11.2023 and case of applicant is at par with him.

7. He further submits that as per prosecution co-accused Shiv

Prakash Vishwakarma @ Chhotu was also apprehended in the house of co-accused Rakesh Yadav @ Sonu along with applicant and Ram Nayan Yadav. He further submits that even from the perusal of recovery memo, it reflects that at the time of recovery, sample was drawn at spot and sample was not drawn before the Magistrate, therefore, it appears that mandatory provisions of Section 52-A of N.D.P.S. Act have not been complied with.

8. He further submits that apart from the present case applicant is also having criminal history of four other cases including one case of N.D.P.S. Act but in the case of N.D.P.S. Act one day before of the present case applicant was made accused on the basis of statement given by the principal accused of that case namely Parvez and admittedly no recovery was made from the possession of applicant in that case.

9. He further submits that in case relates to Section 307 IPC applicant has already been acquitted and trial of the case relates to Section 376 IPC is pending and in that case applicant is on bail. He next submits that when applicant was arrested then it is alleged that from his possession one country made pistol was recovered and on the basis of country made pistol, applicant was implicated for offence under Section 25 of Arms Act. He further submits that entire criminal history of the applicant has been explained in para-21 of the affidavit of instant bail application.

10. He further submits that in the present matter applicant is in jail since 29.07.2022 i.e. for almost one and half years.

11. Per contra, learned AGA opposed the prayer for bail but could not dispute the argument on facts advanced by learned counsel for the applicant.

12. I have heard learned counsel for the parties and perused the record of the case.

13. However, from the record, it reflects that from the possession of applicant and two other accused commercial quantity of Ganja about 124 Kg. was recovered from the house of co-accused Rakesh Yadav @ Sonu but from the recovery memo it reflects that sample was drawn at the spot and it was not drawn before the Magistrate, therefore, it appears that at the time of taking sample provisions of Section 52-A of N.D.P.S. have not been complied with.

14. The Apex Court in the case of **Mangilal Vs. The State of U.P. 2023 SCC Online 862** observed that provisions of Section 52-A of

N.D.P.S. Act are mandatory in nature. Further, the Apex Court in the case of **Simarnjit Singh Vs. State of Punjab 2023 SCC OnLine SC 906**, observed that if there is violation of mandatory provisions of Section 52-A of N.D.P.S. Act, as sample was drawn at spot and not before the Magistrate, then entire recovery becomes doubtful.

15. Further, the Apex Court in the case of **Yusuf @ Asif Vs. State 2023 SCC OnLine SC 1328** also observed that on the basis of non compliance of provisions of Section 52-A of N.D.P.S. Act even entire trial can be vitiated.

16. Further, along with applicant co-accused Shiv Prakash Vishwakarma @ Chhotu was also apprehended but he has already been released on bail ad even co-accused Rakesh Yadav @ Sonu from whose house recovery was made, has also been released on bail by this Court.

17. Further, applicant is however having criminal history of four cases but criminal history of the applicant has been explained in para-21 of the affidavit and from its perusal it reflects that apart from the present case applicant is having criminal history of one another case of N.D.P.S. Act but it appears that one day before from the alleged recovery of the present case applicant was made accused in that case on the basis of statement given by the principal accused of that case namely Parvez, who was arrested at spot and from whose possession recovery of contraband was made and admittedly no recovery was made from the possession of applicant in that case.

18. As far as other cases pending against the applicant are concerned, in case under Sections 307 IPC applicant has already been acquitted and in the case relates to Section 376 IPC applicant is on bail and as far as case relates to Section 25 Arms Act is concerned, in that case applicant was made accused along with instant case as according to the prosecution when he was arrested in the present matter then from his possession one country made pistol was recovered.

19. Further, applicant in the present matter is in jail since 29.07.2022 i.e. for almost one and half years.

20. Therefore, considering the facts and circumstances of the case discussed above, in my view, applicant is entitled to be released on bail.

21. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is **allowed**.

22. Let the applicant - **Suryabhan Yadav** be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicant shall appear before the trial court on the dates fixed, unless his personal presence is exempted.

(ii) The applicant shall not directly or indirectly, make inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or any police officer or tamper with the evidence.

(iii) The applicant shall not indulge in any criminal and anti-social activity.

23. In case of breach of any of the above condition, the prosecution will be at liberty to move an application before this Court for cancellation of the bail of the applicant.

24. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial.

Order Date :- 8.12.2023

AK Pandey