

Court No. - 77

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 50110 of 2023

Applicant :- Pinku Yadav

Opposite Party :- State of U.P.

Counsel for Applicant :- Anil Kumar Dubey, Ram Milan Dwivedi

Counsel for Opposite Party :- G.A.

Hon'ble Mrs. Renu Agarwal, J.

1. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.

2. The present first bail application under Section 439 Cr.P.C. has been filed on behalf of the applicant in Case Crime No. 93 of 2023 under Sections 8/20 NDPS Act Police Station Chilla, District Banda with the prayer to enlarge him on bail.

3. Learned counsel for the accused-applicant submitted that the applicant is innocent and has been falsely implicated in the instant case due to malafide intentions. Allegations as per the F.I.R. is that 100 Kg of Ganja is said to have been recovered from the joint possession of present applicant and co-accused-Shyambabu Bachcha Yadav. It is submitted that there is no public witness of the alleged recovery. It is further submitted that mandatory provisions of Section 42, 43, 50, 52, 53-A, 55 and 57 of the NDPS Act has not been complied with. It is contended that after lodging of the F.I.R., recovery memo was prepared illegally and on which the signature of C.O., Sri R.K. Singh was made on the recovery memo. It is next contended that alleged recovered Ganja is below commercial quantity. It is further contended that Gram Pradhan in collusion with the police has

falsely implicated the present applicant because the father of the applicant is on inimical terms with the Gram Pradhan and in this regard application under Section 156(3) Cr.P.C. has also been filed against the father of the applicant by the Gram Pradhan. Applicant is languishing in jail since 26.09.2023 having no criminal history to his credit and if he is granted the liberty of bail he will not misuse the same and he is ready to furnish his sufficient sureties, bonds and personal bonds.

4. On the other hand, learned AGA has opposed the prayer of bail but could not controvert the aforesaid arguments as advanced by learned counsel for the applicant.

5. Considering the fact that the alleged recovered Ganja is below commercial quantity, there is no public witness of the alleged recovery, there is no FSL report on record to demonstrate that the alleged recovered substance is Ganja, mandatory provisions of Section 50 and 52 of the NDPS Act has not been complied with, applicant is languishing in jail since 26.09.2023 having no criminal history to his credit which goes to show that the applicant is not a usual offender, there are reasonable ground to believe that applicant shall not indulge himself in another case of like nature in compliance of Section 37(1)(b)(ii) of the NDPS Act and without expressing any opinion on the merits of the case, accused-applicant is liable to be released on bail.

6. Let applicant **Pinku Yadav** be released on bail in the above case crime number and on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of Court concerned with the following conditions :-

(i) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(ii) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the court on the date fixed in such proclamation, then the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

(iv) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

(v) The applicant shall also furnish an undertaking from the sureties that the properties (movable/immovable) which are the basis of accepting the surety, shall

not be disposed of by them till the conclusion of trial.

(vi) The applicant shall also give an undertaking to the effect that he will not change his address without prior intimation to the trial court concerned.

(Renu Agarwal,J.)

Order Date :- 1.12.2023

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