

Court No. - 77

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 50185 of 2023

Applicant :- Lalchandra Miya

Opposite Party :- State of U.P.

Counsel for Applicant :- Mohd. Naushad Siddiqui, Bipin Kumar

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. 240 of 2023 under Sections 8/21 of N.D.P.S. Act and Section 18A/18(C), 27 of the Drug and Cosmetics Act Police Station Ali Nagar, District Chandauli 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 288 bottles of Phensedyl Cough Syrup is recovered from the possession of the applicant. It is submitted that applicant is a labour and one distributor hand him over the said cough syrup to deliver the said cough syrup at Baburi Qasba, Chandauli. It is further submitted that there is no public or independent witness of the alleged recovery and provisions of Section 42 and 50 of the NDPS Act has not been complied with. It is further submitted that Drug Inspector, initiated parallel proceeding for sanction and filing complaint, however, two parallel proceedings cannot be initiated for the same

offence. It is contended that as per the F.S.L. report, no adulteration is found in the recovered cough syrup. It is contended that without receiving any analysis reports of samples regarding NDPS substance, charge sheet has been submitted against the applicant. It is further contended that applicant is languishing in jail since 21.09.2023 having no criminal history to his credit as is disclosed in paragraph No. 15 of the affidavit filed in support of the bail application 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 and shall cooperate in the trial.

4. On the other hand, learned AGA has opposed the prayer of bail and submitted that huge amount of cough syrup is found from the custody of the applicant which could not be explained by the applicant, however, it is not controverted that as per the FSL report, the recovered substance is not adulterated.

5. Considering the fact that there is no public or independent witness of the alleged recovery, samples were collected by the Drug Inspector as well as the Police, the samples sent by the police are returned with a noting that no facility of analysis is found in the concerned laboratory, however, the sample sent by Drug Inspector reported that no adulteration is found in the alleged recovered cough syrup, applicant is languishing in jail since 21.09.2023 having no criminal history to his credit and without expressing any opinion on the merits of the case, accused-applicant is liable to be released on bail.

6. Let applicant **Lalchandra Miya** be released on bail in the above case crime number, since the applicant is a resident of West Bengal, therefore, the applicant

shall furnish a personal bond with proof of permanent address and two local sureties to the satisfaction of Court concerned, the trial court shall duly scrutinize and verify the surety and their connection with the present applicant, **the applicant shall also deposit Rs. 50,000/- as cash surety** to ensure his presence 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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