

Court No. - 77

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 52023 of 2023

Applicant :- Pranshu

Opposite Party :- State of U.P.

Counsel for Applicant :- Ravi Prakash Srivastava

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 material brought on record.
2. The present application under Section 439 Cr.P.C has been filed on behalf of the applicant seeking bail in Case Crime No.277 of 2023 under Section 8/20 N.D.P.S. Act, Police Station Aliganj, District Etah.
3. Learned counsel for the accused-applicant submitted that the applicant is innocent and has been falsely implicated in the instant case due to ulterior motives. It is submitted that 14.848 Kg Ganja is said to have recovered from the applicant during search. There is no public or independent witness of the alleged recovery. According to the version of FIR the applicant was intercepted by the police at about 23.14 P.M. at night of 05.10.2023, but arrest was shown at 04.55 A.M. morning of 06.10.2023. Mandatory provision of section 50 of NDPS Act has not been complied with by the police. Alleged recovery is below the commercial quantity. The FSL report is also not on record till date to demonstrate that the alleged recovered substance is ganja. Applicant has no criminal history apart from present case, as mentioned in para-10 of the affidavit filed in support of bail application. Applicant has no criminal antecedents to his credit which shows that applicant is first time offender and the alleged recovered ganja is below commercial quantity, thus the applicant deserves to be enlarged on bail, as the case of the applicant is in complete satisfaction to the conditions as envisaged under under Section 37 (i) (b) (ii) of the NDPS Act. The applicant is languishing in jail since 06.10.2023 having no criminal history and in case he is granted bail, he will not misuse the liberty and would cooperate in the trial proceedings.
4. On the other hand, learned AGA has opposed the prayer for bail and submitted that recovered ganja is near about the commercial quantity, hence

opposed the prayer of bail, but could not controvert the above mentioned facts.

5. Considering the facts and circumstances of the case and taking into account that 14.848 Kg Ganja is said to have recovered from the applicant during search, there is no public or independent witness of the alleged recovery, mandatory provision of section 50 of NDPS Act has not been complied with by the police, alleged recovery is below the commercial quantity, FSL report is also not on record till date, applicant has no criminal history apart from present case, as mentioned in para-10 of the affidavit filed in support of bail application, applicant is languishing in jail since 09.11.2023 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. **It is made clear that if the applicant is found involved in the case of like nature in future, his bail shall automatically cancelled and the court concerned has opportunity to take coercive action against the applicant.**

6. Let applicant **Pranshu** be released on bail in the above case crime number 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 :- 5.12.2023
VKG