

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 52004 of 2023

Applicant :- Ankit Shivhare

Opposite Party :- State of U.P.

Counsel for Applicant :- Manish Tandon

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma,J.

1. Learned AGA 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 learned Counsel for the applicant, Sri Prateek Tyagi, learned A.G.A. for the State and perused the record.

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. 267 of 2023, under Sections 8/20 N.D.P.S. Act and Section 3/25 Arms Act, Police Station- Bewar, District- Hamirpur during pendency of the trial.

4. Counsel for the applicant submits that the applicant has been falsely implicated in the instant case. False recovery 90 kg. Ganja (in 18 packets) has been shown from a Tata Aria vehicle, which does not belong to the applicant. There is no independent witness to the search, seizure and recovery memo. There is nothing on record to demonstrate 'conscious possession' of the applicant. The mandatory provisions of Sections 42, 50, 51 and 52-A of the N.D.P.S Act have not been followed. The sample was taken only from one packet as such the procedure of sampling adopted is in violation of the Rule 8, 9, 10, 11 and 12 of the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022. There is no F.S.L. report to establish that the substance recovered is Ganja. The criminal history of the applicant has been explained in para 24 of the bail application. The applicant is in jail since 24.9.2023. 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, I am of the prima facie view that the provisions of Sections 42, 50, 51 and 52-A of the NDPS Act have not been followed. There is no independent witness to the search, seizure and recovery memo. Sample was not taken from each packet, one sample was taken and sent to the Forensic Science Laboratory thus, the procedure of sampling adopted is in violation of the Rule 8, 9, 10, 11 and 12 of the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022. Inventory of the seized contraband was not duly certified by the Magistrate. Apart from the instant case the applicant is not involved in any case under the NDPS Act, as such there are reasonable grounds to believe that the applicant shall not indulge himself in other cases of similar nature. The applicant is in jail for more than two 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, **Ankit Shivhare** involved in the aforesaid case be released on bail on his furnishing a personal bond and two sureties each of the like amount to the satisfaction of court concerned on the following conditions that:

- i. the applicant shall not tamper with the prosecution evidence;
- ii. the applicant shall not pressurize the prosecution witness;
- iii. the applicant shall appear on each and every date fixed by the trial court.

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 :- 5.12.2023
S.S.