

Court No. - 77

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 52258 of 2023

Applicant :- Simmi @ Samim

Opposite Party :- State Of U.P Through Its Principal Secretary(Home) At Lko.

Counsel for Applicant :- Abdul Majid

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 on record.

2. The present application for bail has been filed seeking bail in Case Crime No.167 of 2023, under section 8/21 of NDPS Act, Police Station Mirzapur, District Saharanpur.

3. Learned counsel for the accused-applicant submitted that the applicant has been falsely implicated in the instant case due to ulterior motives. Recovery of 100 gram Smack (Heroin) is shown from the possession of present applicant, which is below commercial quantity. There is no public or independent of the alleged recovery. There is no FSL report is on record till date. Mandatory provision of sections 41, 42, 50 and 52 of NDPS Act has not been complied with by the police. Apart from the aforesaid case the applicant has no criminal history, as mentioned in para-21 to the affidavit filed in support of the bail application. There is no chance of absconding or tempering the witnesses if the applicant would be enlarged on bail. The applicant is languishing in jail since 19.10.2023 and in case she is granted bail, she 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 but could not controvert the above mentioned facts.

5. Considering the facts and circumstances of the case and taking into account that the recovery of 100 gram Smack (Heroin) is below the commercial quantity, there is no public or independent of the alleged recovery, there is no FSL report is on record till date, mandatory provision of sections 41, 42, 50

and 52 of NDPS Act has not been complied with by the police, applicant has no criminal history, as mentioned in para-21 to the affidavit filed in support of the bail application, applicant is languishing in jail since 19.10.2023 and undertakes that in case he is granted bail, he will not misuse the liberty and would cooperate in the trial proceeding, without expressing any opinion on the merit of the case, it would be appropriate to enlarge the accused-applicant on bail.

6. Let applicant **Simmi @ Samim** be released on bail in the above case crime number on her 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 she 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 her counsel. In case of her absence, without sufficient cause, the trial court may proceed against her 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 her 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 her, 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 her 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 she will not change her address without prior intimation to the trial court concerned.

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.

(Renu Agarwal,J.)

Order Date :- 6.12.2023/VKG