

Court No. - 72

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 53812 of 2023

Applicant :- Arvind Lodhi Alias Makhandas

Opposite Party :- State of U.P.

Counsel for Applicant :- Sanjay Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. List has been revised.
2. Heard Sri Sanjay Kumar, learned counsel for the applicant, Sri Varun Pratap Singh, learned A.G.A. for the State and perused the material placed on record.
3. Applicant seeks bail in Case Crime No.120 of 2023, under Sections 8/20 of NDPS Act, Police Station- Kharela, District Mahoba, during the pendency of trial.
4. As per the allegations of the FIR, 1.2 Kg. Ganja is said to have been recovered from the possession of the applicant on 10.11.2023.
5. Learned counsel for the applicant has argued that the applicant is absolutely innocent and has been falsely implicated in the present case with a view to cause unnecessary harassment and to victimize him. He has nothing to do with the said offence. The recovered contraband is below the commercial quantity. There is no chemical analyst's report to corroborate the prosecution version that the said contraband is Ganja. Learned counsel has further stated that there is no compliance of mandatory provision of Section 52-A of the N.D.P.S. Act. There is no criminal history of the applicant. The applicant is languishing in jail since 10.11.2023. In case, the applicant is released on bail, he will not misuse the liberty of bail.
6. Learned A.G.A. has vehemently opposed the bail application.
7. In ***Arif Khan @ Agha Khan v. State of Uttarakhand (2018) 18 SCC 380***, in which the Apex Court held that Section 50 of the NDPS Act mandatorily required search of the suspect/accused to be carried out in the presence of a magistrate or Gazetted officer, even if such a suspect/accused had waived the right to be taken to a magistrate or Gazetted Officer.

8. Upon hearing learned counsel for the parties, perusal of record and considering the complicity of accused, severity of punishment as well as totality of facts and circumstances, at this stage without commenting on the merits of the case, I find it a fit case for bail.

9. Let the applicant- **Arvind Lodhi Alias Makhandas**, who is involved in aforementioned case be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions. Further, before issuing the release order, the sureties be verified.

(i) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the date 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 IPC.

(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., may be issued and if 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 IPC.

(iv) The applicant shall remain present, in person, before the Trial Court on dates fixed for (1) opening of the case, (2) framing of charge and (3) 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.

10. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

11. It is made clear that observations made in granting bail to the applicant shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

Order Date :- 15.12.2023

Ravi Kant

(Krishan Pahal, J.)