

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 1399 of 2023

Applicant :- Mirza Fareed Beg

Opposite Party :- The State Of U.P. Thru. Prin. Secy. Home Deptt., Lko.

Counsel for Applicant :- Ajey Singh, Brij Bhushan Singh, Pranjal Apurva, Sandeep Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Rejoinder affidavit filed today by learned counsel for the applicant is taken on record.
2. Heard Shri Ajey Singh, learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.
3. This bail application has been moved by the accused/applicant- **Mirza Fareed Beg** for grant of bail, in Case Crime No.895/2022, under Sections 8/20 of N.D.P.S. Act, 1985, Police Station- Kotwali Nanpara, District- Bahraich, during trial.
4. Learned counsel for the accused-applicant while pressing the bail application submits that the applicant has been falsely implicated in this case and he has not committed any offence as claimed by the prosecution nor any contraband has been recovered from the possession of the applicant.
5. It is vehemently submitted that the mandatory provisions of Section 50 of the N.D.P.S Act has not been complied and no right as required to be communicated to the applicant for being searched either before the Gazetted Officer or Magistrate has been communicated as required by law. Reliance in this regard has been laid on **Arif Khan @ Agha Khan Vs. State of Uttarakhand [(2018) 18 SCC 380: MANU/SC/0467/2018]**.
6. It is further submitted that no serious efforts have been made by the police party to procure independent public witnesses, therefore, the recovery in absence of independent public witnesses is *void ab initio*.
7. It is next submitted that applicant is in jail in this case since

18.12.2022 and the trial has not started yet and having regard to the pendency before the trial Court, the same is not going to conclude in near future. Criminal history of one case is shown against the applicant, however, in that case, the applicant has been granted bail by the Sessions Judge, Bahraich vide order dated 09.05.2017 passed in Bail Application No.411/12-A/2017. There is no apprehension that after being released on bail the applicant may flee from the course of law or may otherwise misuse the liberty.

8. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that about 1 kg and 500 Gms 'Charas' recovered from the possession of the applicant, which is commercial quantity and having regard to the twin conditions as enshrined under Section 37 (i) (b) of the NDPS Act, the applicant is not entitled to be released on bail.

9. Perusal of the record would reveal that the main thrust of the learned counsel for the applicant is with regard to non-compliance of Section 50 of the NDPS Act. Reliance in this regard has been placed on **Arif Khan (supra)**. The allegation as leveled against the applicant in the F.I.R are to the tune that the applicant was apprehended and on knowing that he is in possession of contraband, he was informed of his right to be searched before the Magistrate or Gazetted Officer and in this regard a consent letter was also signed by the applicant. A copy of this consent letter has been placed on record at page No.9 of the counter affidavit filed by the State and it is in this background, it is vehemently submitted on behalf of the applicant that no right has been mentioned in this consent letter which prima facie denotes that the applicant has not been informed of his right to be searched before the Magistrate or Gazetted Officer and thus, the recovery is *void ab initio*. These disputed claims and counter claims may be better appreciated and adjudicated by the trial Court after providing an opportunity to the parties to lead evidence, however, having regard to the period of incarceration already undergone by the applicant as well as the submissions made by learned counsel for the applicant with regard to non-compliance of Section 50 of the NDPS Act, in the considered opinion of this Court, the twin conditions as mentioned under Section 37 (i) (b) of the NDPS Act prima facie stands satisfied and a case of bail is made out in favour of the applicant. Applicant is in jail in this case since 18.12.2022 without any previous criminal history. The presence of the applicant could be secured before the trial court by placing adequate conditions.

10. Having regard to the overall facts and circumstances of the case and keeping in view the nature of the offence, evidence,

complicity of the accused, severity of punishment, submissions of the learned counsel for the parties and without expressing any opinion on the merits of the case, I am of the considered view that applicant has made out a case for bail. The bail application is thus **allowed**.

11. Let the accused/applicant- **Mirza Fareed Beg** involved in above-mentioned case, be released on bail on his furnishing a personal bond with two sureties in the like amount to the satisfaction of the court concerned subject to following conditions:-

(i) The applicant shall not tamper with the prosecution evidence by intimidating/pressurizing the witnesses, during the investigation or trial.

(ii) The applicant shall cooperate in the trial sincerely without seeking any adjournment.

(iii) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

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

13. Identity, status and residence proof of the applicant and sureties be verified by the Court concerned before the bonds are accepted.

14. Observations made herein-above by this court are only for the purpose of disposal of this bail application and shall not be construed as an expression of this Court on the merits of the case.

Order Date :- 26.10.2023

Gurpreet Singh