

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 1467 of 2023

Applicant :- Vishal Gupta

Opposite Party :- State Of U.P. Through The Principal Secretary Home, Civil Secretary, U.P. Government Lucknow

Counsel for Applicant :- Farooq Ayoob, Anurag Singh, Mahendra Pratap Singh

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Shri Anurag Singh, learned counsel appearing for the accused-applicant submits that he may not appear before this Court in pursuance of the resolution passed by the Oudh Bar Association and an opportunity be given to the 'pairokar' of the applicant, namely, Ashish Kumar to argue, who is present before this Court and is also a deponent.

2. Having regard to the submissions made by learned counsel for the applicant, an opportunity is provided to the 'pairokar/deponent' of the instant bail application, namely, Ashish Kumar to argue in person.

3. Heard Shri Ashish Kumar In Person as well as learned A.G.A. for the State and perused the record.

4. This bail application has been moved by the accused/applicant- **Vishal Gupta** for grant of bail, in Case Crime No. 579 of 2022, under Section 8/21 N.D.P.S. Act, Police Station Zaidpur, District Barabanki, during trial.

5. Shri Ashish Kumar, deponent of the applicant while pressing the bail application submits that the applicant has been falsely implicated in this case and no contraband as claimed by the prosecution has been recovered from the possession of the applicant and the whole story, as shown by the prosecution in the F.I.R./recovery-memo is false, concocted and could not be believed.

6. It is further submitted that Section 50 of the N.D.P.S. Act has also not been complied in letter and spirit and the right to be searched before the Gazetted officer or Magistrate has not been communicated, as the same was required by established principle of law.

7. It is further submitted that the police party itself admitted that the place from where the applicant was arrested is a busy place, however, no attempt has been made by the police party to procure independent public witness. Thus, the recovery as well as the arrest has become doubtful in absence of any independent public witness.

8. It is next submitted that sample has not been taken as required by the provisions as contained under Section 52(A) of the N.D.P.S. Act as well as the guidelines issued by the Department of Revenue in the year 1989.

9. It is also submitted that though, in the first information report/recovery-memo, 'diacetylmorphine/heroin' is shown to have been weighed with the help of an electronic scale but the same appears to have been weighed along with the cloth wrapped around the heroin and, therefore, the weight of the 'heroin' allegedly recovered from the applicant may not be 260 grams, as shown in the recovery-memo and if the weight of the cloth/wrapper is excluded from 260 grams, the net quantity shown to have been recovered from the possession of the applicant may be much lesser than 250 grams, which is the minimum commercial quantity. Therefore, two stringent conditions mentioned under Section 37(1)(b) of the N.D.P.S. Act may not attract in this case.

10. It is further submitted that the applicant is in jail in this case since 12.12.2022. Criminal history of one case has been explained in rejoinder affidavit, wherein the applicant has been granted bail and there is no apprehension that after being released on bail he may flee from the course of law or may otherwise misuse the liberty.

11. Learned A.G.A., however, opposes the prayer of bail and submits that commercial quantity of 'heroin/diacetylmorphine' i.e. 260 grams has been recovered from the possession of the applicant and having regard to the twin conditions as mentioned under Section 37(1)(b) of the N.D.P.S. Act, he is not entitled to be released on bail.

12. Perusal of the record in the background of the submissions made by the deponent of the applicant as well as learned A.G.A. for the State would reveal that allegation of recovery of 260 grams of 'heroin/diacetylmorphine' is shown to have been recovered from the possession of the applicant. Admittedly there is no independent witness of such recovery. Various submissions have been raised by the 'paikar' of the applicant in order to project that the recovery and arrest of the applicant could not be believed. It is also submitted that the manner in

which the specimen has been taken is not commensurate with the guidelines issued in this regard by the Department of Revenue, Ministry of Finance of the year 1989 and, thus, the mandatory provision of Section 52-A of the N.D.P.S. Act has been violated. It is also the defence of the applicant that as the alleged recovery of 'morphine' has been weighed along with its wrapper, the weight of the same may not be 260 grams, as shown by the prosecution and the same would be much less than 250 grams, which is the minimum commercial quantity. The criminal history of one case alleged against the applicant has been adequately explained. Applicant is in jail in this case since 12.12.2022 (which has been almost about 11 months in jail) and the trial may not culminate in near future. Thus, having regard to all the reasons mentioned herein-before, in the considered opinion of this Court, the twin conditions as enshrined under Section 37(1)(b) of the N.D.P.S. Act stands satisfied. In result, the facility of bail may be extended to the applicant and the presence of the applicant may be secured before the trial court by placing adequate conditions/restrictions. The bail application is thus allowed.

13. Let the accused/applicant- **Vishal Gupta** 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.

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

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

16. 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 on the merits of the case.

Order Date :- 1.12.2023
Praveen