

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 2525 of 2023

Applicant :- Mujammil

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

Counsel for Applicant :- Farooq Ayoob, Anil Kumar Pandey, Km. Pooja Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Shri Anil Kumar Pandey, learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.

2. This bail application has been moved on behalf of the applicant/**Mujammil** for grant of bail, in Case Crime No. 22 of 2023, under Section 8, 21, 23(C), 60 of N.D.P.S. Act registered at Police Station -Masauli, District - Barabanki, during pendency of trial.

3. Learned counsel for the accused-applicant while pressing the bail application submits that the applicant has been falsely implicated in this case and nothing as claimed by the prosecution has been recovered from the possession of the accused-applicant.

4. It is further submitted that Section 42 of the N.D.P.S. Act has been evidently violated, as admittedly, the case of the prosecution appears to be that information with regard to the arrival of the applicant and co-accused with contraband was made available to the police party by the informer, however, no effort has been made by the police party either before or after the alleged arrest and recovery to reduce this information into writing and thus, the mandatory provision as contained in Section 42 of the N.D.P.S. Act has been violated.

5. Learned Counsel for the accused-applicant contends that Section 50 of the N.D.P.S. Act has also not been complied in letter and spirit, as, no right to be searched either before the Magistrate or Gazetted Officer has been communicated to the accused-applicant and thus the recovery as well as the arrest in violation of Section 50 of the N.D.P.S. Act is void *ab initio*.

6. It is also his submission that the accused-applicant and the co-accused are shown arrested with contraband on 21.01.2023 and admittedly, the sample of the contraband allegedly taken at the spot has been received by the Forensic lab on 27.01.2023

and thus the link evidence is absent with regard to the 6 days pertaining to the safe custody of the sample.

7. It is vehemently submitted while relying on the law laid down by the Hon'ble Supreme Court in **Noor Aga vs. State of Punjab (2008) 16 SCC 417**, **Union of India (UOI) vs. Mohanlal and Ors., (2016) 3 SCC 379** as well as **Mohd. Muslim Vs. State (NCT of Delhi); MANU/SC/0320/2023** and **Rabi Prakash vs. State of Odisha; MANU/SCOR/83201/2023**, that samples were required to be taken in pursuance of the guidelines issues by the Department of Revenue, Ministry of Finance, as contained in standing order no. 1/89 dated 13.06.1989, however the same has not been complied in letter and spirit and thus, the same is itself sufficient to take away the sting of the twin conditions as enshrined under Section 37(1)(b) of the N.D.P.S. Act.

8. Learned Counsel for the accused-applicant lastly submits that the applicant is jail in this case since 21.01.2023 and criminal history of three cases was alleged by the State in its counter affidavit, however, the one case bearing Case Crime No. 24 of 2023 under Section 3/25 Arms Act was slapped along with the implication of the applicant in the instant case and in this case he has been granted bail by the competent criminal Court. With regard to another case bearing Case Crime No. 481 of 2015 under Section 3/25 Arms Act, applicant is not having any concern with the same and FIR of that case has been placed on record through rejoinder affidavit and with regard to Case Crime No. 425 of 2015 under Section 392, 411 IPC, a closure report / final report has been submitted. There is no apprehension that after being released on bail he may flee from the course of law or may otherwise misuse the liberty and the conclusion of the trial is not affected in near future.

9. Learned A.G.A. vehemently opposes the prayer for bail and submits that 400 grams of Morphine / Smack has been recovered from the possession of the accused-applicant and having regard to the twin conditions, as enumerated under Section 37(1)(b) of the N.D.P.S. Act, the accused-applicant is not entitled to be released on bail.

10. Having heard learned counsel for the parties and having perused the record, it is reflected that the accused-applicant is shown to have been apprehended with 400 grams of Morphine / Smack. Various submissions have been raised by learned Counsel for the accused-applicant in order to show that the recovery is highly improbable and could not be believed, as also, that the mandatory provision of Section 42 and 50 of the N.D.P.S. Act has been violated. Reliance has also been placed

on the law laid down by the Hon'ble Supreme Court in the cases of *Noor Aga vs. State of Punjab (supra)*, *Union of India (UOI) vs. Mohanlal and Ors., (supra)* as well as *Mohd. Muslim Vs. State (NCT of Delhi) (supra)* in order to show that the specimen has been taken in sheer violation of the guidelines of the year 1989 and also keeping in view the period of incarceration of the applicant, the sting of twin conditions as mentioned in Section 37(1)(b) of the N.D.P.S. Act has softened. Reliance in this regard has been placed on *Rabi Prakash vs. State of Odisha (Supra)*. The accused-applicant is in jail in this matter since 21.01.2023. The criminal history has been adequately explained.

11. Keeping in view all the facts and circumstances of the case, as also, the period of incarceration already undergone, in the considered opinion of this Court, the satisfaction as required under Section 37(1)(b) of the N.D.P.S. Act stands satisfied, therefore, the accused-applicant has made out a case for bail. The bail application is thus **allowed**.

12. Let the applicant/**Mujammil** 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.

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

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

15. 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 :- 3.11.2023/Lokesh Kumar

[Mohd. Faiz Alam Khan, J.]