

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 2754 of 2023

Applicant :- Vipin Singh

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

Counsel for Applicant :- Prahlad Singh, Sanjay Kumar Patel (S.K., Sooraj Lal

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Rejoinder affidavit filed today is taken on record.
2. Heard 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- **Vipin Singh** for grant of bail, in Case Crime No. 0163/2022, under Sections 8/20/23 NDPS Act, Police Station- Piparpur, District- Amethi, 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. Nothing as placed by the prosecution has been recovered from the vehicle which was shown to be driven by the applicant.
5. It is vehemently submitted that Section 42 of the NDPS Act has been patently violated and no information as received with regard to the transportation of illegal contraband has been reduced into writing either before, after or during the course of alleged arrest and recovery and thus, the recovery and arrest in violation of Section 42 of the NDPS Act is *void ab initio*.
6. It is further submitted that no serious efforts have been made to procure the independent public witnesses and the absence of independent public witnesses, when there was occasion and opportunity for the police personnel to have procured them, renders the recovery and arrest as highly doubtful.

7. It is next submitted that even if the case of the prosecution is taken on its face, Section 52-A of the NDPS Act, it appears to have been violated as well as the guidelines issued by the Department of Revenue, Ministry of Finance of the year 1989 has also not been adhered as the sample has been collected at the spot and the same has not been taken before a Magistrate.

8. It is also submitted that no description/ classification of the substance allegedly recovered from the truck, which was being allegedly driven by the applicant, has been shown either in the recovery/ arresting memo nor in the memo through which the sample has been sent to the forensic lab for examination and thus, it could not be presumed that the whole substance shown to have been recovered from the vehicle was "Ganja". It is further elaborated that the *ganja* is derived from *cannabis* plant and the possession of the whole of cannabis plant is not punishable under NDPS Act as under Section 2 (iii) (b) only flowering and fruiting tops of the cannabis plant are punishable and in absence of any such classification, it could not be presumed that the whole substance recovered from the vehicle driven by the applicant was consist of flowering/ fruiting parts of the cannabis plant.

9. It is next submitted that applicant is in jail in this case since 16.11.2022 and during this period only one prosecution witness appears to have been testified and the pace with which the case is traveling before the trial court, the same is not expected to be concluded in near future. The applicant is not having any criminal history and 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.

10. Learned A.G.A., on the other hand, submits that the matter pertains to the recovery of commercial quantity of *ganja* i.e. 88 Kg. and having regard to the twin conditions enumerated under Section 37 (i) (b) of the NDPS Act, the applicant is not entitled to be released on bail.

11. Having heard learned counsel for the parties and having perused the record, it is reflected that allegations against the applicant are to the tune that he was apprehended while driving a truck wherefrom 88 Kgs. of illegal *ganja* has been recovered. The defence of the applicant appears to be that the recovery has

been made in pursuance of an information received earlier in time with regard to the transportation of illegal contraband and the same, despite opportunity available to the police personnels, was not recorded in writing, thus, Section 42 of the NDPS Act is shown to have been violated. The next defence appears to be that the specimen has not been collected in compliance of the guidelines issued by the Department of Revenue, Ministry of Finance of the year 1989 in patent violation of Section 52-A of the NDPS Act. Admittedly, the specimen has been collected at the spot and not before a Magistrate. There is no independent public witness of the recovery or arrest and it also appears to be an admitted fact that applicant is in jail in this case since 16.11.2022 without any previous criminal history and during his detention of one year imprisonment, only one prosecution witness has been testified. All these factors if taken into consideration together, in the considered opinion of this Court are sufficient enough to go to the extent wherein it can be safely invoked that the twin conditions as mentioned under Section 37 (i) (b) of the NDPS Act stand satisfied, in result the facility of bail may be extended to the applicant. The presence of the applicant could be secured before the trial court by placing adequate conditions.

12. 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**.

13. Let the accused/applicant- **Vipin Singh** 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.

(iv). 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 of the Indian Penal Code;

(v). In case, the applicant misuses the liberty of bail and in order to secure his 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 him in accordance with law, under Section 174-A of the Indian Penal Code; and

(vi) 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 default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of his bail and proceed against him in accordance with law.

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 of this Court on the merits of the case.

Order Date :- 11.12.2023
Gurpreet Singh