

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 3021 of 2023

Applicant :- Nazim

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

Counsel for Applicant :- Farooq Ayoob

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Supplementary rejoinder affidavit filed on behalf of the applicant is taken on record.
2. Heard Shri Farooq Ayoob, 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 on behalf of the applicant/**Nazim** for grant of bail, in Case Crime No.22 of 2023, under Section 8, 21, 23(C), 60 of N.D.P.S. Act, Police Station Masauli, District Barabanki, during pendency of 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 nothing as claimed by the prosecution has been recovered from the possession of the accused-applicant.
5. 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.
6. 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*.

7. 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 6 days pertaining to the safe custody of the sample.

8. 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.

9. It is further submitted that identically placed co-accused person of the alleged crime, namely, Mujammil has been released on bail by this Court vide order dated 03.11.2023 passed in Criminal Misc. Bail Application No.2525 of 2023.

10. Learned counsel for the accused-applicant lastly submits that the applicant is jail in this case since 21.01.2023 and criminal history of six cases alleged against the applicant have been explained in para-11 of the supplementary rejoinder affidavit filed today and three of such cases i.e. Case Crime Nos.425 of 2017, 506 of 2017 and 481 of 2015 are not pertaining to the applicant and this fact has been categorically stated in para-30 of the bail application pertaining to which no satisfactory reply has been given by the State in its counter affidavit and with regard to Case Crime Nos.434 of 2015, 23 of 2023 and 452 of 2021, barring one case i.e. Case Crime No.23 of 2023, the applicant has been granted bail and with regard to Case Crime No.23 of 2023, under Section 3/25 of the Arms Act, bail application has not been moved as the same would be moved after obtaining bail in the instant case as the said case is connected with the instant case. 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.

11. Learned A.G.A. vehemently opposes the prayer for bail and submits that 1100 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.

12. 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 1100 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 Sections 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). Identically placed co-accused person of the alleged crime, namely, Mujammil has been released on bail by this Court. The accused-applicant is in jail in this matter since 21.01.2023. The criminal history has been adequately explained. The presence of the applicant could be secured before the trial court by placing adequate conditions.

13. 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**.

14. Let the applicant/**Nazim** 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.

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

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

17. 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 :- 20.11.2023

Anupam S/-