

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 3545 of 2022

Applicant :- Rajveer

Opposite Party :- Union Of India Thru. Narcotics Control Bureau Lko.

Counsel for Applicant :- Rajat Bansal, Anju Agarwal, Desh Ratan Mishra, Jai Priya Swapnil, Nisha Srivastava, Rushida Farheen, Vivek Tiwari

Counsel for Opposite Party :- Akhilesh Kumar Awasthi

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Ms. Nisha Srivastava, learned counsel for the accused/applicant as well as learned counsel for the State and perused the record.
2. This bail application has been moved by the accused/applicant- **Rajveer** for grant of bail, in Case Crime No. 20/2021, under Sections 8, 18, 27-A and 29 of Narcotic Drugs and Psychotropic Substance Act, 1985 Police Station N.C.B., District Lucknow, during trial.
3. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication and no contraband as claimed by the prosecution has been recovered from his possession.
4. It is further submitted that Section 27-A and 29 of the N.D.P.S. Act would not attract against the applicant as he is shown sitting in the adjoining seat of the vehicle from which the contraband has been recovered.
5. It is also submitted that Sections 50, 52-A and 42 N.D.P.S. Act has been violated and the recovery and arrest of the applicant in view of this mandatory provision is void ab-initio.
6. It is further submitted that confessional statement of the applicant has been recorded while he was in the custody of N.C.B. which by virtue of law laid down in **Tofan Singh Vs. State of Tamil Nadu** reported in MANU/ SC/0797/2020 can not be proved against him.

7. It is also submitted that the applicant is in jail in this case since 01.06.2021 and there is no apprehension that the accused-applicant after release on bail, may flee from the process of law or may otherwise misuse the liberty.

8. It is further submitted that in the bail application, criminal history of one case has been written due to typographical error while the applicant is not having any previous criminal history.

9. Shri A.K. Awasthi, learned counsel for the N.C.B. on the other hand submits that the applicant has been arrested while sitting in the vehicle along with 'opium' of 12 K.G. and the commercial quantity of the same starts from 2.5 K.G. thus the twin conditions enumerated under Section 37 (1) (b) of the N.D.P.S. Act would attract and keeping in view all the facts and circumstances of the case as well as the evidence available against the applicant, he 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 on the basis of a secret information the vehicle in which the applicant and co-accused Sunil Verma were sitting was apprehended and searched and 12 K.G. of 'opium' is shown to have been recovered from the vehicle. The contraband which has been recovered from the vehicle has been identified by Forensic Lab as 'opium'. Various submissions have been raised on behalf of the applicant in order to show that mandatory provisions of Sections 42, 50, 52-A of N.D.P.S. Act has not been complied and thus the recovery as well as the arrest of the applicant has been vitiated.

11. Having regard to all the facts and circumstances of the case and keeping in view the quantity of 'opium' allegedly recovered from the vehicle in which the applicant was found sitting, in the considered opinion of this Court no good ground exist for enlarging the applicant on bail, thus the bail application moved on behalf of the applicant is **rejected**.

12. At this juncture, learned counsel for the applicant submits that the applicant is in jail in this case since 01.06.2021 and still no prosecution witness has been testified by the trial court and thus the trial court be directed to conclude the trial within the fixed time frame work.

13. I find substance in the submissions made by learned counsel for the applicant, as the instant case is pertaining to N.C.B. and in comparison to the State Police to whom various other tasks are usually entrusted apart from maintaining law and order, while the work of the N.C.B. is defined and may only be confined to investigation, interception, recovery of narcotics

and appearing in the court for the purpose of recording of evidence. Thus, this Court is of the considered view that in the cases pertaining to N.C.B. the prosecution witnesses in general and at least those prosecution witnesses in particular which are connected with N.C.B. must remain present before the trial court on each and every date of listing of the case for recording of their evidence.

14. Having regard to this, the trial court is directed to conclude the trial of this case within six months from today.

15. A copy of this order be immediately sent to the trial court/ Special Court as well as to the Joint Director N.C.B., Lucknow for strict compliance.

16. It is further provided that if the trial of this case is not concluded within the period stipulated by this Court, the applicant before this Court may renew his prayer for bail before this Court after passage of time mentioned above.

Order Date :- 13.10.2023

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