

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 4058 of 2023

Applicant :- Kedar Sharma

Opposite Party :- Union Of India, New Delhi Thru. Narcotics Control Bureau (N.C.B.) Lko

Counsel for Applicant :- Anil Mishra,Rajat Raj Narayan Bajpai,Vineet Kumar Verma

Counsel for Opposite Party :- Akhilesh Kumar Awasthi

Hon'ble Mohd. Faiz Alam Khan,J.

1. Rejoinder affidavit filed on behalf of the applicant is taken on record.
2. Heard Shri Anil Mishra, learned counsel for the accused/applicant as well as Shri A.K. Awasthi, learned counsel for the N.C.B. and perused the record.
3. This bail application has been moved by the accused/applicant- **Kedar Sharma** for grant of bail, in Case Crime No. 32/ of 2022, under Section 18/29 Narcotic Drugs and Psychotropic Substances Act, Police Station N.C.B., District Lucknow, during trial.
4. Learned counsel for the accused-applicant while drawing the attention of this court towards the recovery memo vehemently submits that even if the case of the prosecution is taken on its face, nothing has been recovered from the possession of the applicant and in absence of any evidence with regard to the connivance of the applicant in indulging in any narcotic trade and transportation, he may not be prosecuted under the relevant penal Sections of the N.D.P.S. Act.
5. It is further submitted that in the recovery memo, the recovery of 3.9 K.G. of opium is shown to have been recovered from the possession of co-accused, namely, Sunil Kumar Singh from a busy place like Bus Station and the only role which has been assigned to the instant applicant is that he was standing by the side of co-accused Sunil Kumar Singh which is natural at a busy place like bus station and Railway Station and only on that basis the complicity of the applicant may not be inferred with regard to his indulgence in the illegal narcotic transportation.
6. It is vehemently submitted that admittedly the N.C.B. Team

who has allegedly shown to have apprehended the co-accused Sunil Kumar Singh and the applicant was having an ample time to procure independent public witnesses, however, no serious efforts appears to have been done in this direction and therefore the two witnesses ear marked by the N.C.B. team were police personnels and they were interested in the prosecution of the applicant and co-accused, thus the recovery and alleged arrest of the applicant is vitiated in absence of independent public witnesses.

7. It is next submitted that the only evidence which has been alleged against the applicant is his own confessional statement and having regard to the law laid down by the Hon'ble Supreme Court in ***Tofan Singh vs state of Tamil Nadu reported in MANU/SC/0797/2020*** the evidentiary value of the confessional statement recorded under Section 37(1) (b) of the N.D.P.,S. Act is akin to the statement of an accused person recorded under Section 161 Cr.P.C. and the only purpose for which it can be used is to contradict the prosecution witnesses and the same may not be proved against the applicant in absence of any recovery in pursuance of that confessional statement.

8. It is further submitted that the applicant is in jail in this case since 14.12.2022 and he is not having any criminal history. Charge sheet in this case has already been filed 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.

9. Learned A.G.A., on the other hands that the applicant is accused of committing an heinous offence, thereofre, he is not entitled to be released on bail.

10. Shri A.K. Awasthi, learned counsel for N.C.B. opposes the prayer of bail of the applicant on the ground that matter pertains to the recovery of commercial quantity of opium and thus the twin conditions as enumerated under Section 37(1) (b) would attract.

11. Having heard learned counsel for the parties and having perused the record, it is evident that the admitted case of the prosecution is that the 2 accused persons including the applicant were apprehended on a prior information that illegal opium is being transported and on their apprehension, 3.9 K.G. opium is shown to have been recovered from the possession of co-accused - Sunil Kumar Singh and a country made pistol along with some live cartridges is also shown to have been recovered from him (Sunil Kumar Singh) and admittedly no recovery of any incriminating article or contraband has been made from the

possession of the applicant and it is in this background, it is submitted that the only evidence which has been placed against the applicant is his own confessional statement and in absence of any recovery from the applicant and the nature of the confessional statement, the chances of conviction of the applicant is remote and reliance has also been placed on Tofan singh (supra). The applicant is in jail in this case since 14.12.2022 and he is not having any criminal history. The complaint has not been enclosed in the counter affidavit, however, it is stated on behalf of the N.C.B. that the same has been filed.

12. Having regard to all the reasons mentioned herein above, in the considered opinion of this court the satisfaction as required under Section 37 (1) (b) of N.D.P.S. Act stands satisfied and the case of bail is made out in favour of the applicant. Thus, the bail application moved on behalf of the applicant is hereby **allowed**.

13. Let the applicant- **Kedar Sharma** involved in the aforesaid case be released on bail on 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 are only for the purpose of disposal of bail application and the same shall not have any bearing on the trial of the case.

Order Date :- 21.11.2023

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