

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 8208 of 2022

Applicant :- Subodh Kumar Yadav

Opposite Party :- Union Of India Thru.Intelligence Officer Ncb Lucknow

Counsel for Applicant :- Vijayendra Prakash Tripathi,Sagar Singh,Shri Ram Maurya,Smriti

Counsel for Opposite Party :- Akhilesh Kumar Awasthi

Hon'ble Mohd. Faiz Alam Khan,J.

1. Supplementary affidavit filed on behalf of the applicant is taken on record.
2. Heard Shri Sagar Singh along with Ishan Baghel, learned counsels for the accused-applicant as well as Shri Akhilesh Kumar Awasthi, learned counsel appearing for the N.C.B. and perused the record.
3. This bail application has been moved by the accused/applicant- **Subodh Kumar Yadav** for grant of bail, in N.C.B. Crime No.35 of 2021, under Sections 8/18/25/29 of the Narcotic Drugs & Psychotropic Substances Act, Police Station N.C.B. Regional Unit, Lucknow, District Lucknow, during trial.
4. The prosecution case in a nutshell is that on 11.08.2021 on the basis of secret information, which was reduced into writing, a team was constituted and in pursuance of the said information vehicle bearing registration No.UP32BG4558 was intercepted on 12.08.2021 at 01:20 hours and three persons including the applicant were found sitting therein and the contraband in three packets were recovered and on being tested, the same was found to be opium of the weight of 4.600kg., which was accordingly sealed at the spot and thereafter complaint was filed.
5. Learned counsel for the accused-applicant while pressing the bail application submits that the applicant has been falsely implicated in this case and no contraband as claimed by the prosecution has been recovered from the possession of the applicant.
6. It is further submitted that the manner in which the vehicle is shown to have been apprehended and recovery/arrest is shown

to have been made, may not be believed and two independent witnesses shown at the time of recovery are the pocket witnesses of the N.C.B. It is also submitted that the applicant is not having any criminal history and he is in jail in this case since 12.08.2021 and admittedly charges in this case have been framed on 16.08.2022 and till now not a single prosecution witness has been testified before the special court and it appears that the intention of the N.C.B. is to keep the applicant in jail for a long time. It is in this background the prosecution witnesses are not appearing before the trial court/special court.

7. It is also submitted that having regard to the pace with which the case is moving before the special court, the same is not going to conclude in near future and the recovery of only 4.600kg has been shown, which is though the commercial quantity, but having regard to the period of incarceration already undergone by the applicant and coupled with the fact that not a single witness has been testified before the special court, a case of bail is made out in favour of the applicant. There is no apprehension that after being released on bail he may flee from the course of law or may otherwise misuse the liberty.

8. It is also submitted that the link evidence with regard to the safe custody of the specimen is also missing and has not been stated specifically in the complaint filed by the N.C.B.

9. Learned counsel for the applicant has relied on ***Mohd Muslim @ Hussain Vs. State (NCT of Delhi)***; 2023 LiveLaw (SC) 260 and ***Rabi Prakash vs. State of Odisha***; MANU/SCOR/83201/2023.

10. Shri Akhilesh Kumar Awasthi, learned counsel appearing for the N.C.B., however, opposes the prayer of bail of the applicant on the ground that the applicant and other accused persons have been found in possession of 4.600kg of opium, which was recovered from the vehicle, wherein they were travelling and it may be not said that they were not in the conscious possession of the same, thus having regard to the quantity as well as twin stringent conditions as enumerated under Section 37(1)(b) of the N.D.P.S. 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 evident that the applicant along with other accused persons is shown to have been apprehended while possessing 4.600kg of opium, which has been recovered from the vehicle, wherein the applicant and other accused persons were allegedly travelling. It is not in dispute that the applicant is

in jail in this case since 12.08.2021 and the charges admittedly have been framed on 16.08.2022, thus it has been a little over two years, the applicant is in jail in this case and till now not a single prosecution witness has been testified before the special court and no reasonable explanation has been given for the delay occurred in testifying the prosecution witnesses. The matter is pertaining to recovery of commercial quantity and the twin stringent conditions as enumerated under Section 37(1)(b) of the N.D.P.S. Act would come into play, but, in the considered opinion of this Court, the sting of twin stringent conditions as enumerated under Section 37(1)(b) of the N.D.P.S. Act would be relaxed in the instant case as firstly the applicant is not having any criminal history and secondly he is in jail in this case since 12.08.2021 and till now not a single prosecution witness has been testified. It may be argued on behalf of the N.C.B. that the period of two years detention may not be sufficient to enlarge the applicant on bail as Hon'ble Supreme Court in various cases has relaxed the conditions as mentioned under Section 37(1)(b) of the N.D.P.S. Act, where the incarceration is above 6 years. I am not in agreement with the contention of learned counsel representing N.C.B. as the period of detention is to be considered in the background of quantity of contraband recovered from the accused. Having regard to the quantity of contraband recovered from the joint possession of the applicant and other accused persons and keeping an eye on the period of incarceration already undergone by the applicant as also the fact that till now not a single prosecution witness has been testified before the special court and no reasonable explanation has been given by N.C.B. for not producing the witnesses before special court and also keeping in view that the applicant is not having any criminal history, the two conditions as mentioned under Section 37(1)(b) of the N.D.P.S. Act stands satisfied and a case of bail is made out in favour of the applicant. Presence of the applicant may be secured before the trial court by placing adequate conditions/restrictions.

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- **Subodh Kumar Yadav** 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.

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 on the merits of the case.

Order Date :- 9.11.2023

Anupam S/-