

**Court No. - 14**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 8425 of 2019

**Applicant :-** Satveer Singh

**Opposite Party :-** Narcotics Control Bureau

**Counsel for Applicant :-** Gulam Mustafa, Mohd Javed, Rizwanul Haque Ansari, Vijay Kumar Asthana

**Counsel for Opposite Party :-** Shikha Sinha, Akhilesh Kumar Awasthi

**Hon'ble Mohd. Faiz Alam Khan, J.**

1. Heard Sri Rizwanul Haque Ansari, learned counsel for the applicant, Sri Akhilesh Kumar Awasthi, learned counsel appearing for Narcotics Control Bureau and perused the record.

2. This bail application has been moved by the accused/applicant- **Satveer Singh** for grant of bail, in Case Crime No.24 of 2018 under Sections 18, 20, 27-A, 29, 60(3) of NDPS Act, Police Station- N.C.B., District Lucknow, during trial.

3. Learned counsel for the applicant submits that applicant has falsely been implicated in this case and nothing as shown by informant has been recovered from the truck which was allegedly driven by the applicant. It is further submitted that Section 42 of the NDPS Act has not been complied with in letter and spirit, so is the condition of Section 50 of the NDPS Act and the recovery of 250 Kg of *ganja* could not be believed in absence of any independent public witness, while there was sufficient opportunity and occasion for the NCB team to have procured the independent public witnesses.

4. It is further submitted that Section 52 (A) of the NDPS Act as well as the guidelines issued therein of 1989 has not been followed while collecting samples from the alleged recovered *ganja*. It is submitted with considerable force that applicant is in jail in this case since 2018 and even after detention of the applicant for five long years, the trial has not been concluded and now, the PW-3 is being examined and having regard to the pace with which the case has traveled so far before the trial court/special court, the same is not going to conclude in near future. Reliance in this regard has been placed on the law laid down by Hon'ble Supreme Court in the case of **Mohd. Muslim Vs. State (NCT of Delhi)**; MANU/SC/0320/2023 as well as on

5. It is further submitted the applicant is not having any criminal history, and he is detained in prison in this case since 01.10.2018 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 of bail.

6. Sri Akhilesh Kumar Awasthi, learned counsel appearing for NCB vehemently opposes the prayer of bail of the applicant on the ground that about 250 Kg of *ganja* has been recovered from the possession of the applicant which is a commercial quantity and the twin conditions as enshrined under Section 37 (i) (b) of the NDPS Act would attract in this case. It is also submitted that the case laws relied on by the applicant are not applicable to the instant case as the case law with regard to ***Mohd. Muslim*** (supra) is applicable to a case where the prosecution witnesses are in large numbers, which is not a case in this case. It is also submitted that having regard to the large quantity of contraband recovered from the possession of applicant, in the interest of social justice, the applicant is not entitled to be released on bail.

6. Having heard learned counsel for the parties and having perused the record, it is reflected that on being intercepted, 250 Kg of *ganja* Is shown to have been recovered from the truck which was being driven by the applicant. various submissions have been raised on behalf of the applicant in order to show that mandatory provisions of Section 42, 50 and 52 (A) and the guidelines of 1989 have not been followed in the instant case and also that no serious effort has been made to procure independent public witnesses. The main thrust of the submission of learned counsel for the applicant was with regard to the period of incarceration of the applicant vis-a-vis the stage of trial. There cannot be any doubt that applicant before this Court is in jail in this case since 01.10.2018, thus, for a little more than five years, he is detained in jail in this case. This Court has called a report from the special Court with regard to the status of the trial and a detailed factual matrix pertaining to the pendency of the case for such a long time has been given by the special Court vide its communication dated 29.08.2023. In a nut shell, the Presiding officer of the special Court has stated that so far three prosecution witnesses have been testified fully, while the statement of PW-4, Dhananjai Kumar Pandey is being recorded. No doubt, three prosecution witnesses who have been fully examined so far have been produced in five long years. In the counter affidavit filed by NCB, the list of witnesses have not been enclosed.

7. In ***Rabi Prakash*** (supra) as well as in ***Mohd. Muslim***

*(supra)*, the crux of the law laid down by the Hon'ble Supreme Court is to the tune that the procedural law may not be permitted to act itself as a punishment and having regard to the wider scope of Article 21 of the Constitution of India, the denial of speedy trial may be interpreted in favour of the applicant/accused in order to take away the sting of Section 37 (i) (b) of the NDPS Act. Thus, without discussing the merits of the case and keeping in view the fact that testimony of only the fourth prosecution witness is being recorded and the applicant is in jail in this case since 2018 and the trial of this case, in the opinion of this Court, is not going to conclude in near future, and the law laid down by the Hon'ble Supreme Court in **Rabi Prakash (supra)** as well as in **Mohd. Muslim (supra)**, the twin conditions mentioned under Section 37 (i) (b) of the NDPS Act, in the considered opinion of this Court stands satisfied and the facility of bail may safely be extended to the applicant subject to certain restrictions and conditions.

8. 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**.

9. Let the accused/applicant- **Satveer Singh** involved in above-mentioned case, be released on bail on his furnishing a personal bond with **two heavy sureties** in the like amount to the satisfaction of the court concerned subject to following conditions:-

**(i) The applicant shall remain present personally before the special Court on each and every date so fixed by the trial Court and shall not seek any adjournment especially when the prosecution witness would be in attendance and if for the reasons which are not under the control of the applicant, he is not able to remain personally present before the special Court, he shall instruct his counsel engaged at the level of the special Court to do all, which is necessary for the expeditious disposal of the case including the cross examination of the prosecution witness present and the violation of this condition alone would be a sufficient ground for the special Court to cancel the facility of bail extended to the applicant.**

**(ii) The applicant shall provide his phone number to the trial Court along with the personal bond, which he may file before it and would keep that mobile number switch on all**

**the time.**

(iii) The applicant shall not tamper with the prosecution evidence by intimidating/pressurizing the witnesses, during the investigation or trial.

(iv) The applicant shall cooperate in the trial sincerely without seeking any adjournment.

(v) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

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

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

12. 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 :- 16.10.2023**

Vipul