

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 7611 of 2023

Applicant :- Haroon

Opposite Party :- Union Of India Dri

Counsel for Applicant :- Parmanand Gupta

Counsel for Opposite Party :- Digvijay Nath Dubey

Hon'ble Brij Raj Singh,J.

1. Heard Shri Parmanand Gupta, learned counsel for the accused-applicant as well as Shri Digvijay Nath Dubey, learned counsel for D.R.I and perused the record.

2. This bail application has been filed seeking release of the accused/applicant **Haroon** on bail, who is involved in Case Crime No. 03 of 2018, under Sections 8/20, 23, 25, 27, 28 & 29 N.D.P.S Act, Police Station- DRI Gomti Nagar, District Lucknow.

3. Learned counsel for the applicant has submitted that the applicant was not apprehended by the department, rather, two co-accused namely Vaseem and Babban have been apprehended along with the vehicle and the alleged recovery of 182.400 Kilograms of contraband (*charas*) has been made from their possession. He further submitted that the name of the applicant has come into light in the statement of co-accused Babban and Vaseem, wherein it is mentioned that the applicant was involved in loading the said contraband (*charas*) into the vehicle and at his behest, the vehicle was being driven, and the same was caught in Lucknow. Learned counsel for applicant further submitted that co-accused Babban and Vaseem have already been granted bail in Criminal Misc. Bail Application No. 7948 of 2022 vide order dated 26.05.2023 and Criminal Misc. Bail Application No. 10630 of 2018 vide order dated 26.05.2023 respectively. He further stated that the case of the applicant stands on a better footing. Learned counsel for the applicant, in the rejoinder affidavit, has explained criminal history seven cases of the applicant out of which three cases pertain to the N.D.P.S act and four cases pertain to some other offences and he is languishing in jail since 13.08.2019. Learned counsel for applicant next submitted that since the applicant was not apprehended by the Police and he has been falsely implicated in the present case, therefore, he may be enlarged on bail.

4. On the other hand, learned counsel for the respondent has opposed the prayer of applicant for grant of bail and has invited attention of the Court towards paragraph-13 of the bail application in which it is stated that the applicant has no criminal history and he is not a previous culprit, but

it is stated in paragraph-7 of the counter affidavit that the applicant has long criminal history. He has further drawn attention of the Court towards the fact that the applicant has previous criminal history of three cases pertaining to N.D.P.S Act which are as follows:-

(i) DRI Case No. 01/2018 (seizure of 237.340 Kgs of Ganja) under NDPS Act, 1985 registered in DRI, Zonal Unit, Lucknow.

(ii) DRI Case No. 03/18-19 (seizure of 293.700 Kgs of Ganja) under NDPS Act, 1985 registered in DRI, Patna Regional Unit.

(iii) Case Crime No. 769/2009 is also registered against the Applicant/ Accused in the Police Station-Majhola, District-Moradabad.

(iv) F.I.R No. 111/2016 under NDPS Act, 1985 registered in Crime Branch, New Delhi (State vs. Haroon).

5. Learned counsel for the respondent has further stated that the present applicant is the main accused and he made cavity in the truck to load the contraband substance and the co-accused are the driver and cleaner of the vehicle. He has further relied on the judgment of Hon'ble Supreme Court in the case of **Narcotics Control Bureau versus Mohit Aggarwal in Criminal Appeal Nos. 1001-1002 of 2022 arising out of Petitions for Special Leave to Appeal (Crl.) No. 6128-29 of 2021.** Paragraph-18 of the judgment is quoted below:-

"In our opinion the narrow parameters of bail available under Section 37 of the Act, have not been satisfied in the fact of the instant case. At this stage, it is not safe to conclude that the respondent has successfully demonstrated that there are reasonable grounds to believe that he is not guilty of the offence alleged against him, for him to have been admitted to bail. The length of period of his custody or the fact the charge-sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the NDPS Act."

6. Learned counsel for respondent/opposite party has submitted that the co-accused who have been granted bail had no previous criminal history to their credit whereas the applicant has criminal history of four cases pertaining to NDPS Act. He further submitted that while granting bail to the applicant, the Court has to satisfy the twin conditions of Section 37 of the NDPS Act and since the applicant has previous criminal history of four cases, therefore, he is not entitled for bail.

7. Considering the facts and circumstances of the case, perusing the record and also considering the nature of allegations, arguments advanced by the learned counsel for the parties, the argument that the applicant is the main

accused who made the cavity in the truck and was responsible for loading the contraband (of 182.400 Kgs) in the cavity of the vehicle, the argument that the applicant has previous criminal history of four cases pertaining to NDPS Act supported by the judgment of Hon'ble Supreme Court in the case of Mohit Aggarwal (supra), therefore, the twin conditions as mentioned in Section 37 of the N.D.P.S. Act having not been satisfied, I do not find it to be a fit case for grant of bail.

8. Accordingly, the bail application of the accused/applicant Haroon is hereby **rejected**.

Order Date :- 20.12.2023

DiVYa