Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 8644 of 2023

Applicant :- Rahul Dixit
Opposite Party :- State Of U.P. Thru. Secy. Home Lko.
Counsel for Applicant :- Sunil Kumar
Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Supplementary affidavit filed on behalf of the applicant is taken on record.

2. Heard learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.

3. This bail application has been moved by the accused/applicant- **Rahul Dixit** for grant of bail, in Case Crime No.337 of 2022, under Sections 8/20 of the Narcotic Drugs & Psychotropic Substances Act, Police Station Ashiyana, District Lucknow, during trial.

4. 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 or in any vehicle, wherein the applicant is shown to be sitting.

5. It is further submitted that the recovery as well as arrest of the applicant along with other co-accused persons is vitiated in absence of any independent public witness as there was sufficient opportunity and occasion for the police party to have procured the same. It is also submitted that Section 50 of the N.D.P.S. Act has not been complied as no right as was required to be informed to the applicant and co-accused persons for being searched before a magistrate or gazetted officer has not been given.

6. It is also submitted that sample of the contraband allegedly recovered from the vehicle, wherein the applicant and other co-accused persons were sitting, has not taken as per guidelines issued by the Department of Revenue vide Circular of the year 1989 and admittedly the samples have not been taken before a magistrate.

7. It is further submitted that 45.153 kilograms of Ganja is stated to have been recovered from the possession of the applicant, however, in the recovery memo it has not been mentioned as to what part of the plant 'cannabis' has been recovered from the possession of the applicant as the whole cannabis plant is not punishable under the N.D.P.S. Act.

8. Highlighting the above factual matrix, it is vehemently submitted by learned counsel for the applicant that under Section 2(iii)(b) of the N.D.P.S. Act, ganja has been defined as the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops) and there is no description in the arrest memo/recovery memo to show as to whether the whole stuff allegedly recovered from the possession of the applicant could be termed as 'ganja' punishable under the N.D.P.S. Act.

9. It is further submitted that identically placed co-accused persons of the alleged crime, namely, Ashish Singh and Ritesh Jaiswal @ Rishu have been released on bail by the Coordinate Bench of this Court as well as by this Court vide orders dated 17.07.2023 and 27.10.2023 passed in Criminal Misc. Bail Application Nos.2997 of 2023 ad 11781 of 2022, respectively.

10. It is also submitted that the applicant is in jail in this case since 11.07.2022, charge-sheet in this case has already been submitted and there is no apprehension that after being released on bail he may flee from the course of law or may otherwise misuse the liberty. Criminal history of applicant has been adequately explained in para no.2 of the supplementary affidavit dated 30.10.2023 and in all these cases, the applicant has been granted bail by competent criminal courts and none of these cases is pertaining to N.D.P.S. Act.

11. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that 45.153 kilograms of ganja has been recovered from the vehicle, wherein the applicant was sitting along with other co-accused persons and having regard to the fact that contraband of commercial quantity has been recovered and having regard to twin stringent conditions as mentioned in Section 37(1)(b) of the N.D.P.S. Act, applicant is not entitled to be released on bail.

12. Having heard learned counsel for the parties and having perused the record, it is evident that case of the prosecution as is emerging from the F.I.R./recovery memo is to the tune that at the relevant point of time, a vehicle was apprehended by the police party, wherein the applicant and other co-accused persons were found sitting with illegal ganja and after

compliance of Section 50 of the N.D.P.S. Act, the said ganja was recovered from the vehicle, which was weighed as 45.153 kilograms, thus the ganja has been recovered from joint possession of the accused persons. Identically placed co-accused persons of the alleged crime, namely, Ashish Singh and Ritesh Jaiswal @ Rishu have been released on bail by the Coordinate Bench of this Court as well as by this Court. While granting facility of bail to the co-accused Ashish Singh, the Coordinate Bench has considered the law laid down by Hon'ble Supreme Court in ***Mohd Muslim @ Hussain Vs. State (NCT of Delhi);*** *2023 LiveLaw (SC) 260* wherein phrase 'reasonable cause' has been interpreted. Thus having regard to the fact that identically placed co-accused person of the alleged crime, namely, Ashish Singh has been released on bail by the Coordinate Bench of this Court and nothing has been brought in the knowledge of this Court, which may suggest that the said order has been challenged at any higher forum and also keeping an eye on the period of detention of the applicant and the law laid down by Hon'ble Supreme Court in ***Mohd Muslim @ Hussain*** (supra), in the considered opinion of this Court, the twin conditions as enumerated under section 37(1)(b)(ii) of the NDPS Act stands satisfied and on the principle of parity, the facility of bail may also be extended to the applicant. Charge-sheet in this case has already been filed. Applicant is in jail in this case since 11.07.2022 and criminal history of the applicant has been adequately explained. The presence of the applicant could be secured before the trial court by placing adequate conditions.

13. 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.

14. Let the accused/applicant- **Rahul Dixit** 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.

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

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

17. 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 :- 30.10.2023
Anupam S/-

Digitally signed by :-
ANUPAM SINGH PATEL
High Court of Judicature at Allahabad,
Lucknow Bench