

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 9284 of 2023

Applicant :- Yadvinder Singh

Opposite Party :- Union Of India Thru. Investigating Officer , N.C.B

Counsel for Applicant :- Rajendra Prasad Mishra

Counsel for Opposite Party :- Akhilesh Kumar Awasthi

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard Shri R.P. Mishra, learned counsel for the accused/applicant as well as Shri A.K. Awasthi, learned counsel for N.C.B. and perused the record.

2. This bail application has been moved by the accused/applicant- **Yadvinder Singh** for grant of bail, in Case Crime No. 05/2023, under Sections 8, 18, 25, 29 N.D.P.S. Act, 1985, Police Station NCB, Lucknow, District Gonda, during trial.

3. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication and the applicant has been arrayed as an accused in this case only on account of suspicion and apprehension while the applicant was not involved in any illegal business of contraband.

4. It is vehemently submitted that admittedly the opium has not been recovered from the possession of the applicant and the same is shown to have been recovered from the truck which was being driven by the co-accused 'Surjit Singh' and only on the basis that the applicant is the owner of the truck, the complicity of the applicant has been shown in the illegal transportation of the opium.

5. It is further submitted that the story as cooked up by the N.C.B. is based on the confessional statement of co-accused Surjit Singh as well as the confessional statement of the applicant, however, the nature of the statement recorded before the N.C.B. Officers is akin to the statement recorded under Section 161 Cr.P.C. and therefore the same could not be proved against the applicant in absence of any recovery of the contraband.

6. It is further submitted that applicant is the owner of the truck

from which the contraband has been recovered and if any mischief is committed by the driver of the truck, the applicant may not be held vicariously liable.

7. It is further submitted that the applicant has cooperated in the investigation and remained present before the Officers of the N.C.B. as and when his presence was required, however, the statement as shown to have been recorded by the N.C.B. is false and the applicant has retracted the same at the first available opportunity before the trial court.

8. It is further submitted that there is no evidence with regard to any conspiracy of transportation of illegal opium. The applicant is running a business of transport and he is also owner of few trucks and also have taken some trucks on lease from their owners and therefore it is impossible for him to know the loading and unloading of each and every truck and the same could only be in the knowledge of the drivers of such trucks.

9. It is further submitted that on the basis of transfer of some money in the bank account of one 'Karu Shaw' the complicity of the applicant has been shown in the instant case. While Karu Shaw is also a transporter and is also running a 'Dhaba' near Hathiya Baba Temple in the name and style of 'Manokamna Dhaba' and the trucks which were loaded from Punjab for their onward journey to West Bengal usually consume 800-900 Liters Diesel and about Rs. 63,000/- to 70,000/- is required for the purpose of filling of diesel and for this purpose the applicant would either pay this money to the truck drivers or the truck drivers usually borrow some money from the local drivers/ owners of trucks or Dhaba owners enroutes. And in this case as the tyres of the truck of the applicant were damaged, the truck driver had taken some money from Karu Shaw who is also a transporter as well as a Dhaba owner and the money shown by the N.C.B. for the purchase of opium is infact the amount of loan taken by the driver, paid by the applicant to the Google pay account of Karu Shaw.

10. It is further submitted that the price of 4 K.G. opium shown to have been recovered from co-accused Surjit Singh is about Rs. 4,00,000/- and there is no substance in the allegation that Rs. 80,000/- was paid for the purpose of the same.

11. It is also submitted that the driver of the truck is only authorized to load coal and if he has loaded any other illegal commodity the applicant is not liable for the same and the possession of illegal opium from the driver of the vehicle may not be attributed to the applicant.

12. Learned counsel for the applicant has also relied on the law laid down by the Hon'ble Supreme Court in the following cases:-

"(I) ***State of Rajasthan v. Permanand*** reported in 2014 AIR SCW 1578.

(II) ***Bhola Singh Vs. State of Punjab*** reported in 2011 Crl. L.J. 2296.

(III) ***Aditya Kumar Vs. Union of India***, reported in 2022 SCC OnLine All 625."

13. Shri A.K. Awasthi appearing on behalf of N.C.B. vehemently opposes the plea of bail and submits that the applicant is engaged in illegal business of sale and purchase of opium and his complicity has been shown in the voluntarily confessional statement of applicant and co-accused Surjit Singh, who was arrested while carrying 4 K.G. of opium and applicant is the owner of the said truck bearing Registration No. PB 05 AL 5637 is the instant applicant.

14. It is vehemently submitted that co-accused Surjit Singh in his voluntarily statement recorded under Section 67 of the N.D.P.S. Act has admitted that it was on the instructions given by the applicant on telephone he had taken 4 K.G. of opium from Karu Shaw and it was the applicant who has provided the mobile phone number of Karu Shaw and it was Karu Shaw who had given him 4 packets of opium and he received those packets under the instructions given by the applicant and when he was on his way back, he was apprehended by the N.C.B. Officers.

15. It is also stated by him that Rs. 10,000/- was promised to pay him by the applicant for such transportation of opium.

16. It is further submitted that the applicant in his voluntarily statement given under Section 67 of the N.D.P.S. Act has also confessed his guilt and in categorical terms admitted that Karu Shaw was known to him for last 5 months and they had met at Champaran. The applicant had also given mobile phone no. of Karu Shaw and also stated that he had purchased the opium recovered from co-accused Surjit Singh @ of one lakh rupees per K.G. and on 19.2.2023 and 26.2.2023 Rs. 40,000/- & Rs. 40,000/-, respectively was transferred by the applicant in the bank account of Karu Shaw through UPI and the remaining amount was agreed to be paid after delivery of the opium.

17. It is further submitted that a communication has been sent

by the Intelligence Officer of N.C.B. of date 10.10.2023, a copy of which is being placed for perusal of the Court intimating therein that owners of Manokamna Dhaba is one Vishnu Sao, Laldhari Sao and Karu Shaw is even not their family members. Thus the defence taken by the applicant is patently false and could not be believed and keeping in view the fact that the applicant is the kingpin of the crime and having regard to the twin conditions mentioned under Section 37 (1) (b) of N.D.P.S. Act, the applicant is not entitled to be released on bail.

18. Having heard learned counsel for the parties and having perused the record, it is revealed that on 1.3.2023 at 14.30 hours a discrete information was received by the Junior Intelligence Officer of NCB with regard to the transportation of opium which was reduced into writing and a team was accordingly constituted and about 10.40 P.M. on the same day a truck bearing Registration No. P.B. 05 AL 5637 was intercepted and one driver namely, Surjit Singh was found driving the truck and on the information provided by him from the back of the driver seat 4 pockets of opium were recovered containing 4 K.G of opium. The statement of co-accused Surjit Singh was recorded under Section 67 of the N.D.P.S. Act wherein he stated that he was instructed by the applicant who was the owner of the truck to receive this opium from one Karu Shaw and that the Karu Shaw had given him this opium on 28.2.2023 at Champaran Jharkhand. The statement of the applicant is also shown to have been recorded under Section 67 of the N.D.P.S. Act wherein he also stated to have admitted that he had purchased this opium @ 1,00,000/- per K.G. from Karu Shaw and had given him Rs. 80,000/- in advance by transferring it through UPI on 19.2.2023 and 26.2.2023 and the rest of the money was agreed to be paid on delivery of the opium. The Bank account details of the applicant is also collected by the N.C.B which shows that Rs.40,000/- was transferred through U.P.I. to Karu Shaw by the applicant on two occasions. The applicant had admitted the transfer of this money to Karu Shaw on the pretext that the applicant is a transporter and owns many trucks and had also taken some trucks on lease and as the money is usually required to be given to the drivers for diesel and other expenses and sometimes the drivers borrow this money from the other drivers or the Dhaba owners situated enroute and since the tyres of the truck were damaged , the money which has been transferred by the applicant to the bank account of Karu Shaw was taken by his driver for replacement of those tyres. The N.C.B. has also placed before this Court a communication sent by the Intelligence Officer Ranchi, wherein it is stated that Karu Shaw is not the real owner of Manokamna Dhaba nor he is related to the owners of the said Dhaba who are stated to be "Vishnu Sao

and Lal Dhari Sao". Admittedly the complicity of the applicant is surfaced in this case on account of confessional statement of Surjit Singh (driver of the truck) and on the basis of his own confessional statement and the transfer of Rs. 40,000/- to one Karu Shaw allegedly made by the applicant on two occasions.

19. It is not clear from the counter affidavit filed by the N.C.B as to whether the alleged supplier of the opium Karu Shaw has been apprehended/ traced, however his statement recorded under Section 67 of the N.D.P.S. Act has not been filed with the counter affidavit, which suggests that he has still not been apprehended. Hon'ble Supreme Court in **Tofan singh vs The State of Tamil Nadu reported in MANU/SC/0797/2020** has opined with regard to evidenciary value of the statement recorded under Section 67 of the N.D.P.S. Act. and the same is akin to the statement recorded under Section 161 Cr.P.C. Admittedly the applicant is not having any previous criminal antecedents and admittedly he has not been found in actual possession of the 4 K.G. opium and his complicity in the crime has been shown on the ground that actual possession of the opium was with co-accused Surjit Singh but the applicant had directed him to take this opium from one Karu Shaw and Karu Shaw has still not been apprehended. It is verbally informed by learned counsel for N.C.B. that the complaint in this case has also been filed.

20. Thus, having regard to all the facts and circumstances mentioned herein before and also keeping an eye on the quantity of opium recovered from co-accused Surjit Singh, the case of the instant applicant is distinguishable from the role of co-accused Surjit Singh who has been found in the actual possession of the 4 Kg. opium and thus so far as the applicant is concerned, the twin conditions mentioned under Section 37(1) (b) of N.D.P.S. Act stands satisfied, moreso when he is in jail in this case since 16.05.2023 and is not having any criminal history. Complaint in this case appears to have 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.

21. In the result bail application moved by the applicant is ***allowed.***

22. Let the applicant- **Yadvinder Singh** involved in the aforesaid case be released on bail on 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 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.

(iv). The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code;

(v). In case, the applicant misuses the liberty of bail and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the Court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him in accordance with law, under Section 174-A of the Indian Penal Code; and

(vi) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of his bail and proceed against him in accordance with law.

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

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

25. 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 :- 29.11.2023

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