

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 9314 of 2023

Applicant :- Shakil Khan

Opposite Party :- State Of U.P. Thru. Prin. Secy. Deptt. Of Home Lko.

Counsel for Applicant :- Mohammad Imaran

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard Shri Mohammad Imaran, learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.

2. This bail application has been moved by the accused/applicant- **Shakil Khan** for grant of bail, in F.I.R./Case Crime No. 0146 of 2021, under Section 8/21/23(c) of N.D.P.S. Act, Police Station Sareni, District Raebareli, during trial.

3. Learned counsel for the accused-applicant while pressing the bail application submits that the applicant has been falsely implicated in this case and he has not committed any offence as claimed by the prosecution nor any contraband as shown by the prosecution has been recovered from the vehicle wherein the applicant is shown to be found sitting. Elaborating further, it is submitted that applicant was only employed as 'driver' of the vehicle and, therefore, he was not in conscious possession of the contraband.

4. It is further submitted that about 5 quintals 'poppy straw' and 1.5 kg. of 'opium' is shown to have been recovered from the vehicle. However, the opium to the tune of 1.5 kg. is not commercial quantity and, therefore, with regard to the same the twin conditions, as enumerated under Section 37(1)(b) of the N.D.P.S. Act would not attract and keeping in view the fact that there is no independent public witness of the recovery nor any serious effort has been made by the police party to procure the public witnesses either before during or after the alleged seizure and arrest the recovery of five quintals of 'poppy straw' would also not be believed.

5. It is further submitted that applicant is languishing in jail in this case since 22.05.2021 and he is not having any criminal history. He belongs to a very poor family and further detention

of the applicant would create financial hardship for his family and till now not a single prosecution witness has been testified before the trial Court. There is no apprehension that after being released on bail he may flee from the course of law or may otherwise misuse the liberty. Co-accused Navi Alam has already been granted bail by this Court, vide order dated 28.8.2023 passed in Crl. Misc. Bail Application No. 8349 of 2021.

6. Learned A.G.A. on the other hand submits that matter pertains to the recovery of 1.5 kg. of opium and five quintals of 'poppy straw' and having regard to the commercial quantity of 'poppy straw' recovered from the conscious possession of the applicant, he is not entitled to be released on bail.

7. Having heard learned counsel for the parties and having perused the record, it is evident that the case of the prosecution is to the tune that at the relevant point of time the police party on the basis of prior information received attempted to apprehend the impugned vehicle and after chasing it for some distance the same was stopped and it was found that applicant-Shakil Khan was driving the vehicle, while the co-accused-Navi Alam was sitting next to him and on being searched, five quintals of poppy straw and 1.5 kg. of opium was recovered from the vehicle. The defence of the instant applicant is to the tune that he was the 'driver' of the vehicle and he was not in the knowledge that any contraband was being transported by the vehicle.

8. Perusal of the record would reveal that in the Bail Application No. 8349 of 2021 of co-accused Navi Alam, vide order dated 25.07.2023, the trial Court was directed to submit a report with regard to the status of the trial, as it was shown that applicant is in jail in this case since 22.05.2021. The trial Court in its communication dated 05.08.2023 had informed that till 05.08.2023 not a single prosecution witness was testified, while the charge against the applicant was framed way back on 03.09.2021. It is further informed by the trial Court that all the witnesses of this case are police personnels and they are posted at some other districts and despite process are being issued to them constantly, they are not appearing for the purpose of recording of their evidence. It is also highlighted that if prosecution witnesses would be in attendance, the trial of the case may be concluded expeditiously. Thus, it is transpired from the record that the prosecution is not taking interest in producing the prosecution witnesses who are all police personnels. Identically placed co-accused Navi Alam has been granted bail by this Court, vide order dated 28.8.2023.

9. This Court is of the considered view that the process of adjudication may itself be not permitted to act as a punishment. The punishment of any accused person, who is also carrying a presumption of innocence could only be inflicted after holding him guilty after a fair trial. Thus, keeping in view all the facts and circumstances of the case especially the circumstance that for the last two years prosecution has not presented a single witness before the trial Court, in the considered opinion of this Court, the twin conditions, as enumerated under Section 37(1) (b) of the N.D.P.S. Act stand satisfied and discretion may exercise in favour of the applicant, moreover when he is not having any criminal antecedents.

10. 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.

11. Let the accused/applicant- **Shakil Khan** 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.

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

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

14. 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 :- 1.11.2023

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