

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 9506 of 2023

Applicant :- Shiv Kumar

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

Counsel for Applicant :- Ram Milan Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Rejoinder affidavit filed by learned counsel for applicant is taken on record.

2. Heard Shri Ram Milan Yadav, 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 filed seeking release of the accused/applicant **Shiv Kumar** on bail, who is involved in Case Crime No. 44 of 2023 under Section 8/21 N.D.P.S Act, Police Station Kamrauli, District Amethi.

4. Learned counsel for the applicant while pressing the bail application submitted that 100 grams of contraband (Smack) is alleged to be recovered from the possession of the applicant. He further submitted that Section 50 of the N.D.P.S. Act has not been complied in letter and spirit and the right to be searched before the gazetted officer or magistrate has not been communicated to the applicant as the same was required by established principle of law. It is further submitted that no serious efforts have been made by the police to procure independent public witness and the absence of independent public witness casts a cloud of suspicion over the whole prosecution story and even if the case of the prosecution is believed, only 100 grams of Smack is shown to have been recovered from the possession of the applicant, which is much below the commercial quantity i.e. 250 grams.

5. It is further submitted by learned counsel for applicant 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. It is further submitted by learned counsel for applicant that the applicant has criminal history of three cases which has been explained by him in the paragraph-18 of the Rejoinder affidavit filed by him today before the Court and he further stated that the applicant is languishing in jail since 10.05.2023.

6. Learned A.G.A has opposed the prayer of bail of the

applicant and has submitted that the applicant has committed the crime therefore, he is not entitled for bail.

7. Considering the facts and circumstances of the case, perusing the record, also considering the nature of allegations, arguments advanced by the learned counsel for the parties, the argument that only 100 grams of Smack is alleged to be recovered from the possession of the applicant, the argument that Sections 50 of the N.D.P.S Act is not complied with and without expressing any opinion on the merits of the case, I find it to be a fit case for grant of bail.

8. Accordingly, the bail application is **allowed**.

9. Let the applicant **Shiv Kumar** be released on bail in the above case crime number on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of Court concerned with the following conditions :-

(i) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(ii) 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 her under Section 229-A of the Indian Penal Code.

(iii) In case, the applicant misuses the liberty of bail during trial 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.

(iv) 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 absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

10. It is made clear that the observations made in this order are limited to the purpose of determination of this bail application and will in no way be construed as an expression on the merits of the case. The Trial Court shall be absolutely free to arrive at its independent conclusions

on the basis of evidence led unaffected by anything in this order.

Order Date :- 18.10.2023
DiVYa