Neutral Citation No. - 2023:AHC-LKO:67355

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 7165 of 2021
Applicant :- Dhananjay Singh Second Bail
Opposite Party :- State of U.P.
Counsel for Applicant :- Vijay Pathak,Himanshu Tiwari,Saurabh Tiwari
Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard Shri Himanshu Tiwari, learned counsel for the applicant as well as learned A.G.A. for the State and perused the record.

2. This second bail application has been moved by the accused/applicant-**Dhananjay Singh** for grant of bail, in Case Crime No.380 of 2020, under Sections 8, 20, 27(a) of the N.D.P.S. Act and 420, 467, 468, 471, 474 I.P.C., Police Station Bhadokhar, District Raebareli, during trial as his first bail application has been rejected by a Coordinate Bench of this Court vide order dated 17.12.2020 passed in Bail No.10792 of 2020.

4. Brief facts, necessary for disposal of these bail applications, as are emerging from the record, are to the tune that on 14.10.2020, Inspector Ram Ashish Upadhyaya along with his team was deputed on the law and order duty and was also checking the vehicles and about 04:30am, they saw a troller truck coming from Dalmau Road, driver of which after seeing the police personnel turned the vehicle towards Prayagraj. The police personnel by gesture made by the torch, asked the driver to stop the vehicle, but he attempted to fled away, however, by chasing the vehicle the same was intercepted and on being interrogated, the driver of the vehicle informed that some chemical is stored in the troller truck along with huge quantity of Ganja and a Scorpio car bearing registration No.BR03PA2870 is also following it with three of their other associates sitting therein. At that time one Scorpio Car was seen coming towards

troller and as road was already blocked by the troller, they could not fled away and all the persons, who were sitting in the troller and Scorpio were arrested. The driver of the troller has stated his name as Jatinder Singh while khalasi of the troller has stated his name as Riyaz Mohammad and third person, who was sitting in the troller has stated his name as Vikas Kumar and other co-accused persons Sanjay Singh, Dhananjay Singh and Rajan Singh Yadav, who were allegedly sitting in the Scorpio, were also arrested and confessed that they all are involved in the trade of narcotics and they are bringing ganja from Andhra Pradesh and the same is intended to be sold at Sonbhadra, Mirzapur, Varanasi and Bhadohi as well as in many other districts of Bihar. After providing them an option to be searched before a magistrate or gazetted officer, the accused persons reposed confidence in the police party and after preparation of their consent letters, personal search of the accused persons was taken and after taking their personal search, the driver of the troller Jatinder Singh and driver of the Scorpio Rajan Kumar Yadav unloaded 13 sacks from the troller and informed that ganja is stored therein. Total weight of these 13 sacks was found 391.550kg. The Scorpio driver Rajan Kumar Yadav also took out 8 packets from the Scorpio Car containing 84kg ganja. Thus in total 475.550kg ganja was recovered from both the vehicles. It is also stated in the F.I.R./recovery memo that 500grams Ganja was taken as sample from a packet and was sealed on the spot, however, being early in the morning public witnesses could not be procured. The accused persons were taken to the police station and an F.I.R. was lodged on 15.10.2020. The sample collected on the spot was sent to forensic lab for examination on 19.10.2020, however, as is reflected from the counter affidavit filed by the State, the forensic report is still awaited. Admittedly charge-sheet has been filed.

5. Learned counsel for the accused-applicant while pressing the bail applications submits that the applicant has been falsely implicated in this

case and no contraband has been recovered from the possession of the applicant.

6. It is further submitted that despite chasing the troller and arresting the applicant and co-accused persons, who were sitting in the vehicles and even during writing of the seizure memo, no independent public witness is stated to be present, which is highly improbable and belies the story as cooked up by the police party.

7. It is further submitted that Section 50 of the N.D.P.S. Act has not been complied in letter and spirit while admittedly the applicant were also searched before the search of the vehicles. Thus recovery in violation of Section 50 of the N.D.P.S. Act is *void ab initio*. It is also submitted that samples as has been taken are in violation of Section 52(A) of the N.D.P.S. Act as well as contrary to the guidelines issued in Standing Order No.1/89 dated 13.06.1989 issued under subsection (1) of Section 52A of NDPS Act by the Department of Revenue, Ministry of Finance, Government of India and it is not clear as to why and where the sample allegedly taken on the spot was kept as admittedly, as is evident from the C.A.-5 enclosed with the counter affidavit filed by the State, sample has been sent to the forensic lab on 19.10.2020 and has not been collected before a magistrate. Thus not only Section 52(A) of the N.D.P.S. Act has been violated but guidelines issued in Standing Order No.1/89 dated 13.06.1989 has also been bye-passed.

8. It is also submitted that identically placed co-accused person namely Jatinder Singh has been granted bail by a Coordinate Bench of this Court vide order dated 21.09.2023 passed in Criminal Misc. Bail Application No.10659 of 2023. Learned counsel for the applicant has also placed reliance on ***Rabi Prakash vs. State of Odisha; MANU/SCOR/83201/2023*** and ***State of Kerala and Ors. v. Kurian Abraham (P) Ltd.; (2008) 3 SCC 582*** wherein following earlier decision rendered in ***Union of India v. Azadi Bachao Andolan (2004) 10 SCC 1***,

wherein it was held that the aforesaid statutory instructions are mandatory in nature.

9. It is next submitted that applicant is in jail in this case since 15.10.2020 and till now only two prosecution witnesses have been testified before the trial court and having regard to the number of prosecution witnesses given in the charge-sheet, which are 11 in numbers, the trial is not going to conclude in near future. Applicant is not having any criminal history, charge-sheet in this case has already been submitted and there is no apprehension that after being released on bail the applicant may flee from the course of law or may otherwise misuse the liberty. Though the first bail application of the applicant has been rejected on 17.12.2020 but keeping in view the fact that identically placed co-accused person namely Jatinder Singh has been granted bail subsequently on 21.09.2023 and the first bail application of the applicant was rejected on 17.12.2020 and till now only two prosecution witnesses have been testified before the trial court, there appears material change in circumstance since rejection of first bail application of the applicant.

10. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that the applicant has committed an heinous offence and having regard to the fact that the matter pertains to commercial quantity, the applicant is not entitled to be released on bail in view of the twin conditions as enumerated under Section 37(i)(b) of the N.D.P.S. Act.

11. Having heard learned counsel for the parties and having perused the record, it is evident that the applicant is shown to have been arrested along with other co-accused persons transporting 475.550 kg. Ganja in two vehicles. Admittedly 391.550kg ganja is shown to have been recovered from troller and 84kg ganja is shown to have been recovered from the Scorpio car. The applicant is shown to have been confessed that the whole quantity of Ganja belongs to him and is indulged in the business of transporting and selling ganja, which he purchased from Andhra Pradesh.

Various submissions have been made by learned counsel for the applicant in order to show that apart from other provisions, Standing Order No.1/89 dated 13.06.1989 issued under subsection (1) of Section 52A of NDPS Act by the Department of Revenue, Ministry of Finance, Government of India has been violated. Admittedly the sample, which has been taken on the spot at the time of arrest of the applicant has been sent for forensic examination on 19.10.2020 after a delay of 5 days.

12. At the outset, it is worth mentioning that Section 52A of the N.D.P.S. Act was introduced by way of an amendment by the Central Government in the year 1989 and the matter relating to sampling is governed by the said Section of the law and the various instructions issued by the Govt. of India from time to time.

13. Section 52A of the Narcotic Drugs and Psychotropic Substances Act reads as hereunder provided:

> *[52A. Disposal of seized narcotic drugs and psychotropic substances. — (1) The Central Government may, having regard to the hazardous nature of any narcotic drugs or psychotropic substances, their vulnerability to theft, substitution, constraints of proper storage space or any other relevant considerations, by notification published in the Official Gazette, specify such narcotic drugs or psychotropic substances or class of narcotic drugs or class of psychotropic substances which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may from time to time, determine after following the procedure hereinafter specified.*
>
> *(2) Where any narcotic drug or psychotropic substance has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53, the officer referred to in sub-section (1) shall prepare an inventory of such narcotic drugs or psychotropic substances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the narcotic drugs or psychotropic substances or the packing in which they are packed, country of origin and other particulars as the*

officer referred to in sub-section (1) may consider relevant to the identity of the narcotic drugs or psychotropic substances in any proceedings under this Act and make an application, to any Magistrate for the purpose of—

(a) certifying the correctness of the inventory so prepared; or

(b) taking, in the presence of such Magistrate, photographs of such drugs or substances and certifying such photographs as true; or

(c) allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate and certifying the correctness of any list of samples so drawn.

(3) Where an application is made under sub-section (2), the Magistrate shall, as soon as may be, allow the application.

(4) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872) or the Code of Criminal Procedure, 1973 (2 of 1974), every court trying an offence under this Act, shall treat the inventory, the photographs of narcotic drugs or psychotropic substances and any list of samples drawn under sub-section (2) and certified by the Magistrate, as primary evidence in respect of such offence].

14. A plain reading of the aforesaid Section shows that the manner and procedure of sampling is not specifically provided in it and rather by Sub Section (1), the Central Government has been empowered to prescribe by notifications the procedure to be followed for seizure, storage and disposal of drugs and psychotropic substances. The Central Government has in exercise of that power issued Standing Order No. 1 of 1989 which prescribes the procedure to be followed while conducting seizure of the contraband. The said Order of 1989 succeeds the previous Standing Order No.1 of 1988.

15. The Standing Order No.1/89 dated 13.06.1989 issued under subsection (1) of Section 52A of NDPS Act by the Department of Revenue, Ministry of Finance, Government of India. Section (II) of the

said Order of 1989 provides for the general procedure for sampling, storage and reads as under:-

> STANDING ORDER No. 1/89 SECTION II - GENERAL PROCEDURE FOR SAMPLING, STORAGE, ETC.
>
> ***"2.1. All drugs shall be properly classified, carefully weighed and sampled on the spot of seizure.***
>
> ***2.2. All the packages/containers shall be serially numbered and kept in lots for sampling. Samples from the narcotic drugs and psychotropic substances seized shall be drawn on the spot of recovery, in duplicate, in the presence of search witnesses (Panchas) and the person from whose possession the drug is recovered, and a mention to this effect should invariably be made in the panchanama drawn on the spot.***
>
> ***2.3. The quantity to be drawn in each sample for chemical test shall not be less than 5 grams in respect of all narcotic drugs and psychotropic substances save in the cases of opium, ganja and charas (hashish) where a quantity of 24 grams in each case is required for chemical test. The same quantities shall be taken for the duplicate sample also. The seized drugs in the packages/containers shall be well mixed to make it homogeneous and representative before the sample (in duplicate) is drawn.***
>
> ***2.4. In the case of seizure of a single package/container, one sample in duplicate shall be drawn. Normally, it is advisable to draw one sample (in duplicate) from each package/container in case of seizure of more than one package/container.***
>
> ***2.5. However, when the packages/containers seized together are of identical size and weight, bearing identical markings, and the contents of each package given identical results on colour test by the drug identification kit, conclusively indicating that the packages are identical in all respects, the packages/containers may be carefully bunched in lots of ten packages/containers except in the case of ganja and hashish (charas), where it may be bunched in lots of 40 such packages/containers. For each such lot of packages/containers, one sample (i n duplicate) may be drawn.***

2.6. Where after making such lots, in the case of hashish and ganja, less than 20 packages/containers remain and, in the case of other drugs, less than 5 packages/containers remain, no bunching would be necessary and no samples need be drawn.

2.7. If such remainder is 5 or more in the case of other drugs and substances and 20 or more in the case of ganja and hashish, one more sample (in duplicate) may be drawn for such remainder package/container.

2.8. While drawing one sample (in duplicate) from a particular lot , it must be ensured that representative samples in equal quantity are taken from each package/container of that lot and mixed together to make a composite whole from which the samples are drawn for that lot.

2.9. The sample in duplicate should be kept in heat-sealed plastic bags as it is convenient and safe. The plastic bag container should be kept in a paper envelope which may be sealed properly. Such sealed envelope may be marked as original and duplicate. Both the envelopes should also bear the No. of the package(s)/container(s) from which the sample has been drawn. The duplicate envelope containing the sample will also have a reference of the test memo. The seals should be legible. This envelope along with test memos should be kept in another envelope which should also be sealed and marked "Secret - Drug sample/Test memo", to be sent to the chemical laboratory concerned.

3. The seizing officers of the Central Government Departments, viz., Customs, Central Excise, Central Bureau of Narcotics, Narcotic s Control Bureau, Directorate of Revenue Intelligence, etc. should despatch samples of the seized drugs to one of the laboratories of the Central Revenues Control Laboratory nearest to their offices depending upon the availability of test facilities . The other central agencies like BSF, CBI and other central police organizations may send such samples to the Director, Central Forensic Laboratory, New Delhi. All State enforcement agencies may send samples of seized drugs to the Director/Deputy Director/ Assistant Director of their respective State Forensic Science Laboratory.

> ***3.1. After sampling, a detailed inventory of such packages/containers shall be prepared for enclosure with the panchnama. Original wrappers shall also be preserved for evidentiary purposes."***

16. In ***State of Kerala and Ors. v. Kurian Abraham (P) Ltd. (2008) 3 SCC 582*** wherein following the earlier decision rendered in ***Union of India v. Azadi Bachao Andolan (2004) 10 SCC 1***, it was held that the aforesaid statutory instructions are mandatory in nature.

17. The sanctity of the Standing Order 1/89 came for consideration before the Supreme Court in ***Noor Aga v. State of Punjab (2008) 16 SCC 417***, wherein it was held as under:-

> *"91. Logical corollary of these discussions is that the guidelines such as those present in the Standing Order cannot be blatantly flouted and substantial compliance therewith must be insisted upon for so that sanctity of physical evidence in such cases remains intact. Clearly, there has been no substantial compliance of these guidelines by the investigating authority which leads to drawing of an adverse inference against them to the effect that had such evidence been produced, the same would have gone against the prosecution."*

18. Noticing an apparent conflict between the standing order of 1988 and 1989 as the former provides for sampling at the spot of seizure and sending the same to laboratory within 72 hours whereas the latter provides for sampling before a Magistrate, the same was dealt with by the Hon'ble Supreme Court in ***Union of India (UOI) v. Mohanlal and Ors., (2016) 3 SCC 379.*** The relevant paragraphs of the said Judgment of the Hon'ble Apex Court are reproduced hereunder:

> *"**Seizure and sampling***
>
> *12. Section 52-A(1) of the NDPS Act, 1985 empowers the Central Government to prescribe by a notification the procedure to be followed for seizure, storage and disposal of drugs and psychotropic substances. The Central Government has in exercise*

of that power issued Standing Order No. 1 of 1989 which prescribes the procedure to be followed while conducting seizure of the contraband. Two subsequent standing orders one dated 10-5-2007 and the other dated 16-1-2015 deal with disposal and destruction of seized contraband and do not alter or add to the earlier standing order that prescribes the procedure for conducting seizures.

" Para 2.2 of Standing Order No. 1 of 1989 states that samples must be taken from the seized contraband on the spot at the time of recovery itself. It reads: "2.2. All the packages/containers shall be serially numbered and kept in lots for sampling. Samples from the narcotic drugs and psychotropic substances seized, shall be drawn on the spot of recovery, in duplicate, in the presence of search witnesses (panchas) and the person from whose possession the drug is recovered, and a mention to this effect should invariably be made in the panchnama drawn on the spot."

13. Most of the States, however, claim that no samples are drawn at the time of seizure. Directorate of Revenue Intelligence is by far the only agency which claims that samples are drawn at the time of seizure, while Narcotics Control Bureau asserts that it does not do so. There is thus no uniform practice or procedure being followed by the States or the Central agencies in the matter of drawing of samples. This is, therefore, an area that needs to be suitably addressed in the light of the statutory provisions which ought to be strictly observed given the seriousness of the offences under the Act and the punishment prescribed by law in case the same are proved. We propose to deal with the issue no matter briefly in an attempt to remove the confusion that prevails regarding the true position as regards drawing of samples.

14. Section 52-A as amended by Act 16 of 2014, deals with disposal of seized drugs and psychotropic substances. It reads:

> *"52-A.Disposal of seized narcotic drugs and psychotropic substances.—(1) The Central Government may, having regard to the hazardous nature of any narcotic drugs or psychotropic substances, their vulnerability to theft, substitution, constraints of proper storage space or any other relevant considerations, by notification published in the Official Gazette, specify such narcotic drugs or psychotropic substances or class of narcotic*

drugs or class of psychotropic substances which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may, from time to time, determine after following the procedure hereinafter specified.

(2) Where any narcotic drug or psychotropic substance has been seized and forwarded to the officer in charge of the nearest police station or to the officer empowered under Section 53, the officer referred to in sub-section (1) shall prepare an inventory of such narcotic drugs or psychotropic substances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the narcotic drugs or psychotropic substances or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-section (1) may consider relevant to the identity of the narcotic drugs or psychotropic substances in any proceedings under this Act and make an application, to any Magistrate for the purpose of—

(a) certifying the correctness of the inventory so prepared; or

(b) taking, in the presence of such Magistrate, photographs of such drugs or substances and certifying such photographs as true; or

(c) allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate and certifying the correctness of any list of samples so drawn.

(3) When an application is made under sub-section (2), the Magistrate shall, as soon as may be, allow the application.

(4) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872) or the Code of Criminal Procedure, 1973 (2 of 1974), every court trying an offence under this Act, shall treat the inventory, the photographs of narcotic drugs, psychotropic substances, controlled substances or conveyances and any list of samples drawn under sub-section (2) and certified by the Magistrate, as primary evidence in respect of such offence."

15. It is manifest from Section 52-A(2)(c) (supra) that upon seizure of the contraband the same has to be forwarded either to the officer-in-charge of the nearest police station or to the officer

empowered under Section 53 who shall prepare an inventory as stipulated in the said provision and make an application to the Magistrate for purpose of (a) certifying the correctness of the inventory, (b) certifying photographs of such drugs or substances taken before the Magistrate as true, and (c) to draw representative samples in the presence of the Magistrate and certifying the correctness of the list of samples so drawn.

16. Sub-section (3) of Section 52-A requires that the Magistrate shall as soon as may be allow the application. This implies that no sooner the seizure is effected and the contraband forwarded to the officerin-charge of the police station or the officer empowered, the officer concerned is in law duty-bound to approach the Magistrate for the purposes mentioned above including grant of permission to draw representative samples in his presence, which samples will then be enlisted and the correctness of the list of samples so drawn certified by the Magistrate. In other words, the process of drawing of samples has to be in the presence and under the supervision of the Magistrate and the entire exercise has to be certified by him to be correct.

17. The question of drawing of samples at the time of seizure which, more often than not, takes place in the absence of the Magistrate does not in the above scheme of things arise. This is so especially when according to Section 52-A(4) of the Act, samples drawn and certified by the Magistrate in compliance with sub-sections (2) and (3) of Section 52-A above constitute primary evidence for the purpose of the trial. Suffice it to say that there is no provision in the Act that mandates taking of samples at the time of seizure. That is perhaps why none of the States claim to be taking samples at the time of seizure.

18. Be that as it may, a conflict between the statutory provision governing taking of samples and the Standing Order issued by the Central Government is evident when the two are placed in juxtaposition. There is no gainsaid that such a conflict shall have to be resolved in favour of the statute on first principles of interpretation but the continuance of the statutory notification in its present form is bound to create confusion in the minds of the authorities concerned instead of helping them in the discharge of their duties. The Central Government would, therefore, do well, to

re-examine the matter and take suitable steps in the above direction.

19. Mr Sinha, learned Amicus Curiae, argues that if an amendment of the Act stipulating that the samples be taken at the time of seizure is not possible, the least that ought to be done is to make it obligatory for the officer conducting the seizure to apply to the Magistrate for drawing of samples and certification, etc. without any loss of time. The officer conducting the seizure is also obliged to report the act of seizure and the making of the application to the superior officer in writing so that there is a certain amount of accountability in the entire exercise, which as at present gets neglected for a variety of reasons. There is in our opinion no manner of doubt that the seizure of the contraband must be followed by an application for drawing of samples and certification as contemplated under the Act. There is equally no doubt that the process of making any such application and resultant sampling and certification cannot be left to the whims of the officers concerned. The scheme of the Act in general and Section 52-A in particular, does not brook any delay in the matter of making of an application or the drawing of samples and certification. While we see no room for prescribing or reading a time-frame into the provision, we are of the view that an application for sampling and certification ought to be made without undue delay and the Magistrate on receipt of any such application will be expected to attend to the application and do the needful, within a reasonable period and without any undue delay or procrastination as is mandated by sub-section (3) of Section 52-A (supra). We hope and trust that the High Courts will keep a close watch on the performance of the Magistrates in this regard and through the Magistrates on the agencies that are dealing with the menace of drugs which has taken alarming dimensions in this country partly because of the in effective and lackadaisical enforcement of the laws and procedures and cavalier manner in which the agencies and at times Magistracy in this country addresses a problem of such serious dimensions."

19. The Hon'ble Supreme Court in ***Mohd. Muslim Vs. State (NCT of Delhi); MANU/SC/0320/2023*** has opined as under:

"19. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

20. The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused's guilt may be proved. The judgments of this court have, therefore, emphasized that the satisfaction which courts are expected to record, i.e., that the accused may not be guilty, is only prima facie, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation (as held in Union of India v. Rattan Malik MANU/SC/0076/2009 : (2009) 2 SCC 624). Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (ref. Satender Kumar Antil supra). Having regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail."

20. The Hon'ble Supreme Court in ***Rabi Prakash vs. State of Odisha; MANU/SCOR/83201/2023*** has held as under:

"4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent – State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act."

21. Thus prima facie I find force in the submissions of learned counsel for the applicant only for the purpose of disposal of prayer of bail of the applicant. The applicant is admittedly in jail in this case since 15.10.2020

and till now only two prosecution witnesses have been testified before the trial Court. Thus in the detention period of three years of the applicant, only two prosecution witnesses have been presented so far and it is in this background, it is submitted that trial is not expected to conclude in near future. Though the first bail application of the applicant has been rejected on 17.12.2020 but keeping in view the fact that identically placed co-accused person namely Jatinder Singh has been granted bail subsequently on 21.09.2023 and the first bail application of the applicant was rejected on 17.12.2020 and till now only two prosecution witnesses have been testified before the trial court, there appears material change in circumstance since rejection of first bail application of the applicant.

22. Thus having regard to all the facts and circumstances of the case and for reasons and law discussed herein before and also keeping any eye on the fact that identically placed co-accused person Jatinder Singh has been granted bail by a Coordinate Bench of this Court and applicant is not having any criminal history, the satisfaction as required under Section 37(i)(b) of the N.D.P.S. Act stands satisfied and in the considered opinion of this Court, facility of bail may be extended to the applicant, subject to certain conditions.

23. 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**.

24. Let the accused/applicant- **Dhananjay Singh** involved in above-mentioned case, be released on bail on his furnishing 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) Applicant shall deposit his passport with the trial court and if he is not having any passport issued in his name, they shall file an affidavit in this regard before the trial court.

(iv) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail and his involvement in any subsequent crime would be a sufficient ground for the trial court to cancel the facility of bail granted by this Court.

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

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

27. 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 of this Court on the merits of the case.

Order Date :- 16.10.2023
Anupam S/-

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