

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11201 of 2023

Applicant :- Lavkush Singh @ Tiger

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

Counsel for Applicant :- Vijay Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Heard Shri Vijay Kumar Mishra, learned counsel for the accused-applicant as well as Shri Rajneesh Kumar, learned A.G.A. for the State, and perused the record.

2. This bail application has been filed seeking release of the accused/applicant **Lavkush Singh @ Tiger** on bail, who is involved in Case Crime No. 249 of 2023 under Sections 8/20 N.D.P.S Act, Police Station Umri Begumganj, District Gonda, during pendency of trial.

3. Learned counsel for the applicant submitted that the applicant has been falsely implicated in the present case and false recovery of 120 grams/1000 tablets of contraband (Alprazolam) has been shown against the applicant and there is complete departure of Section 50 of the N.D.P.S Act as search and seizure procedure was not adopted by the Gazetted Officer. There is no independent witness of the alleged recovery and the alleged recovery has not been made in accordance with law. He further submitted that the said incident took place on 25.07.2023 and the recovery memo was prepared on the same date, but the FSL Report which is filed along with the counter affidavit indicates that the sample was received on 18.08.2023. Learned counsel for applicant has relied on the notification of the department i.e. circular no. 1/88, issued by the Narcotics Control Bureau provides that within 72 hours, the sample in question should be provided to Forensic Science Laboratory. In the present case, the sample of contraband i.e. Alprazolam tablets was received on 18.08.2023 i.e. after 24 days from the date of incident, which is much belated, thus the recovery of the said contraband is quite doubtful. Learned counsel for applicant has relied on the decision of the co-ordinate Bench of this Court dated 12.07.2023 in Criminal Misc. Bail Application No. 13590 of 2021. Paragraph-8 of the aforesaid order is quoted below:-

"In support of the said arguments, he draws my attention to the statement of the co-accused who has stated that the drugs in question were kept at his residence and were transported through the vehicle and the driver had driven the vehicle. He thus argues that the applicant did not have any conscious possession of the alleged drugs and thus he cannot be tried for an offence under the N.D.P.S. Act. He next argues that the samples allegedly drawn from the offending seized drugs were not forwarded within a time span of 72 hours, which is a mandatory requirement in terms of the circular No.1/88. He further argues that even the point No.1.5 of the said circular requires that the sample should be drawn in the presence of the witness was not done. He further argues that the applicant has no criminal antecedent and thus, he satisfies the mandate of Section 37(b)(ii) of the N.D.P.S. Act. He lastly argues that the applicant has no criminal antecedents and is in custody since 13.07.2021 and the examination of the first witness out of seven witnesses proposed to be examined is going on and there is no likelihood of the trial being concluded in the near future and thus, he argues that pre-trial detention violates the rights of the applicant under Article 21 of the constitution of India. In support of his argument as recorded above, the counsel for the applicant has placed reliance on the judgments of Hon'ble Apex Court passed in Union of India vs. Shiv Shanker Kesari reported in (2207) 3 SCC (Cri) 505; Sk. Raju @ Abdul Haque @ Jagga vs. State of West Bengal reported in 2019 (106) ACC 303; State of Rajasthan vs. Parmanand reported in 2014 2 SCC (Cri) 563; Sanjeev and another vs. State of Himachal Pradesh reported in 2022 2 SCC (Cri) 522; Union of India vs. Bal Mukund and others reported in 2010 1 SCC (Cri) 54; Avtar Singh and others vs. State of Punjab reported in 2003 (1) JIC 134 (SC); Criminal Appeal No.523 of 2005 decided in the case of Ranjitsingh Brahmajeetsing Sharma vs. State of Maharashtra and Another and also the judgment of this Court in Criminal Misc. Bail Application No.42918 of 2021 decided in the case of Aditya Kumar vs. Union of India Through Narcotic Control Bureau, Lucknow."

4. Learned counsel for the applicant further submitted that co-accused Vivek Singh @ Kunne has been granted bail in Criminal Misc. Bail Application No. 10870 of 2023 vide order dated 06.10.2023. Learned counsel for applicant has explained criminal history of 3 cases of the applicant in paragraph-16 of the affidavit filed in support of the bail application and criminal history of one case has been explained by him in para-16 of the rejoinder affidavit. He further stated that except for the present case, there is no criminal antecedent pertaining to N.D.P.S Act and he further stated the applicant is languishing in jail since 25.07.2023.

5. Learned A.G.A has opposed the prayer of bail of the applicant but he could not dispute the fact that the sample was sent for FSL Report within time. He further stated that contraband (Alprazolam tablets) found from the possession of the applicant is above commercial quantity, therefore bail is liable to be rejected.

6. 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 the sample of contraband (Alprazolam tablets) was not received by Forensic Science Laboratory within 72 hours, which is a complete violation of Circular No. 1/88 of the department, supported by the decision in case of Wahid Ali (supra), the argument that Section 50 of the N.D.P.S Act is not complied with, the argument that there is no independent eye witness of the said recovery, I find that there is complete departure from the procedure established under the N.D.P.S Act, , therefore, the twin conditions as mentioned in Section 37(1)(b) of the N.D.P.S. Act having been satisfied, in as much as there is no likelihood of the accused applicant of committing similar offence in future, and without expressing any opinion on the merits of the case, I find it to be a fit case for grant of bail.

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

8. Let the accused/applicant **Lavkush Singh @ Tiger** involved in above-mentioned case, be released on bail on his furnishing a personal bond with two sureties each in the like amount to the satisfaction of the court concerned subject to 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.

9. 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 :- 7.12.2023

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