Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12498 of 2022

Applicant :- Dal Bahadur Shahi
Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko.
Counsel for Applicant :- Ajey Singh,Anuj Dayal
Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard Shri Ayodhya Prasad Mishra, 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- **Dal Bahadur Shahi** for grant of bail, in Case Crime No.326 of 2022, under Sections 8/20 of the Narcotic Drugs & Psychotropic Substances Act, Police Station Rupaidiha, District Bahraich, 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 no contraband as claimed by the prosecution has been recovered from the possession of the applicant.

4. It is further submitted that the secret information allegedly received from the informer has not been reduced into writing either before or after recovery/arrest of the applicant, thus mandatory provision of Section 42 of N.D.P.S. Act has been violated. It is also submitted that Section 50 of the N.D.P.S. Act has also not been complied in letter and spirit and the right to be searched before the gazetted officer or magistrate has not been communicated as the same was required by established principle of law.

5. It is also submitted that samples of the contraband have also not been taken in compliance of Section 52(A) of the N.D.P.S. Act and the applicant is in prison in this case since 02.09.2022, however, not a single prosecution witness has been testified before the trial court and having regard to the pace with which the trial is going on, it is not expected to conclude the same in near future.

6. It is further submitted that the 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 he may flee from the course of law or may otherwise misuse the liberty.

7. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that the applicant has been apprehended with 2kg of charas and moreover he is a citizen of Nepal and would not be available for trial and having regard to the material/evidence available against the applicant, he is not entitled to be released on bail

8. Having heard learned counsel for the parties and having perused the record, it is recalled that in the considered opinion of this Court, the benefit of Article 21 of the Constitution of India read with Section 439 Cr.P.C. would also be available to a foreigner and the procedural benefit could not be denied to a foreigner only on account of the fact that he is not a citizen of India if otherwise he is having a case of bail.

9. Coming to the merits of this case, various submissions have been made by learned counsel for the applicant in order to show that arrest and recovery from the possession of the applicant is highly doubtful and could not be believed as well as mandatory provisions of the N.D.P.S. Act has been violated. Reliance in this regard has been placed on ***Arif Khan @ Agha Khan vs. State of Uttarakhand****; (2018) 18 SCC 380* and ***Union of India Vs. Shiv Shankar Keshari****; (2007) 7 SCC 798.* Admittedly there is no independent public witness of the recovery. The applicant is detained in prison in this case for about one year and he is not having any criminal history and the trial has not yet started. For the reasons mentioned herein before, in the considered opinion of this Court, the satisfaction as required under Section 37(1)(b) of the N.D.P.S. Act stands satisfied in this case. Nothing has been shown on behalf of the prosecution, which may persuade this Court to further detain the applicant in jail. Applicant is in jail in this case since 02.09.2022 without any criminal history. Presence of the applicant may be secured before the trial court by placing adequate conditions/restrictions.

10. 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**.

11. Let the accused/applicant- **Dal Bahadur Shahi** involved in above-mentioned case, be released on bail on his furnishing a personal bond with **two local 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 :- 13.10.2023
Anupam S/-

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