

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12618 of 2022

Applicant :- Waseem Kha

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

Counsel for Applicant :- Vishwa Nath Singh

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Heard Shri Vishwa Nath Singh, learned counsel for the applicant as well as Shri Rajnish Kumar Verma, learned A.G.A. for the State and perused the record.

2. This bail application has been filed seeking release of accused/applicant **Waseem Kha** on bail, in Case Crime No. 328 of 2022, under Sections 8/20 N.D.P.S Act. Police Station Rupaideeha, District Bahraich.

3. Learned counsel for the applicant submitted that 2 kg contraband (Charas) has been recovered from the possession of the co-accused Resham Khadga and Dal Bahadur Shahi, whereas only 1.5 kg of charas is alleged to be recovered from the possession of the applicant.

4. Learned counsel further submitted that the co-accused Resham Khadga and Dal Bahadur Shahi have already been granted bail and a detailed order has been passed in Criminal Misc. Bail Application No. 12493 of 2022 vide order dated 13.10.2023 and Criminal Misc. Bail Application No. 12498 of 2022 vide order dated 13.10.2023 respectively. The case of the applicant is standing on a better footing than that of the co-accused and is covered with the factum of parity and he has no criminal history and is languishing in jail since 02.09.2022, as such the applicant is also entitled to be enlarged on bail.

5. Learned A.G.A. has opposed the prayer for grant of bail, but could not dispute the fact that co-accused Resham Khadga and Dal Bahadur Shahi have been granted bail.

6. Considering the facts and circumstances of the case, perusing the record and also considering the nature of allegations, arguments advanced by the learned counsel for the parties, looking into the fact that the co-accused Resham Khadga and Dal Bahadur Shahi having identical role have already been granted bail and in the considered opinion of this Court, the conditions as required under Section 37(1)(b) of the N.D.P.S Act stands satisfied in this 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 **Waseem Kha** 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 :- 17.10.2023
DiVYa