

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11445 of 2023

Applicant :- Umesh Kumar Bhatnagar

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

Counsel for Applicant :- Rajiv Raman Srivastava, Adarsh Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh, J.

1. Heard Shri Adarsh Shukla, learned counsel for the applicant, Shri Akhilesh Kumar Srivastava, learned AGA for the State and perused the record.
2. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.148 of 2023, under Section 8/22 N.D.P.S. Act, Police Station Singahi, District Lakhimpur Kheri.
3. Learned counsel submitted that bare perusal of the recovery memo indicates that 120 gms of Alprazolam, mixed with Boric Acid has been recovered from the possession of the applicant. Learned counsel further submitted that there is no independent eye witness of the said recovery. The contraband substance alleged to have been recovered is a mixture of Alprazolam and Boric Acid. It is submitted that boric acid is not contraband substance therefore, the quantity itself is very doubtful.
4. Learned counsel submitted that case is more doubtful for the reason that Annexure CA-5 indicates that sample has been received by Forensic Science Laboratory, Mahanagar, Lucknow on 03.08.2023, which is in violation of Notification No.1/88 of the Narcotics Bureau Department because within 72 hours, the contraband substance should be received by the Laboratory but admittedly, it is received by the Laboratory after seven days, thus the recovery is quite doubtful. Learned counsel has further submitted that police has falsely implicated the applicant due to enmity. The applicant has no previous criminal antecedents to his credits. He is languishing in jail since 28.07.2023.
5. Learned counsel in support of his contentions has relied upon the judgment passed by this Court in Criminal Misc. Bail Application No.13590 of 2021 (Wahid Ali vs. Narcotics Control Bureau, Lucknow) decided on 12.07.2023 wherein in para 8, various judgments of the Hon'ble Supreme Court has been dealt with. Para 8 of the said judgment is quoted

below:-

"8. 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.**"

6. Learned AGA has opposed the prayer for bail and has submitted that contraband substance is above commercial quantity because 120 gms of Alprazolam is recovered from the possession of applicant and 100 gms is the mark of commercial quantity.

7. Considering the facts and circumstances of the case, argument that there is no independent eye witness of the crime; argument that recovery memo indicates that 120 gms contraband substance is a mixture of Alprazolam and boric acid but boric acid is not coming within the purview of NDPS Act ; argument that there is violation of Notification 1/88 of Narcotics Bureau Department; and the applicant has no criminal history and the recovery is quite doubtful, I hold that twin condition of Section 371(b) of NDPS Act is fulfilled therefore, it is fit case for bail.

8. Let the applicant, **Umesh Kumar Bhatnagar**, 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 him 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 :- 11.12.2023

Pks