

**Court No. - 14**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 11682 of 2023

**Applicant :-** Ashish Singh

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

**Counsel for Applicant :-** Manoj Kumar Singh

**Counsel for Opposite Party :-** G.A.

**Hon'ble Mohd. Faiz Alam Khan,J.**

1. Counter affidavit filed by the State is taken on record.
2. Rejoinder affidavit filed by learned counsel for the applicant is also taken on record.
3. Heard Shri Manoj Kumar Singh learned counsel for the accused/applicant as well as learned A.G.A. for the State and perused the record.
4. This bail application has been moved by the accused/applicant- **Ashish Singh** for grant of bail, in Case Crime No. 167 of 2022, under Sections 8/20 of N.D.P.S. Act, Police Station Raniganj, District Pratapgarh, during trial.
5. Learned counsel for the accused-applicant while pressing the bail application submits that the accused-applicant has falsely been implicated in the instant case and nothing as claimed by the prosecution has been recovered either from the possession or pointing of the applicant.
6. It is next submitted that the facts as are emerging from the record is to the tune that on 29.05.2022 at about 2.10 pm, secret information was given by the informer about the transportation of 'Ganja' and believing on this, a trap was laid by the police party and two vehicles standing near the gate of Canal were apprehended where some persons were loading the bags of 'Ganja' from the vehicle Urban Cruiser to vehicle Baleno. On being apprehended, many bags containing 'Ganja' have been recovered and on being questioned, the vehicle Baleno was admitted to be brought by co-accused Vinod Singh while the vehicle Urban Cruiser was admitted to be brought by the co-accused Rajesh Singh and it is also admitted by the accused persons that the instant applicant along with Vinod Singh and Ajimuddin had arrived there to purchase 'Ganja' from Rajesh Singh and during the course of loading/unloading, they have

been apprehended and 240 kgs of 'Ganja' has been recovered.

7. It is vehemently submitted that even if the case of the prosecution is taken on its face the applicant along with other co-accused persons is shown to be the purchaser of 'Ganja' , which was allegedly brought by co-accused Rajesh Singh in his confessional statement where he has admitted to have brought the 'Ganja' in his vehicle Urban Cruiser and it has not been specified in the seizure/arresting memo as to what quantity of contraband has been recovered from which vehicle.

8. It is further submitted that it appears to be an admitted case of the prosecution that 'Ganja' was being supplied by co-accused Rajesh Singh and when the shifting of the 'Ganja' started from the vehicle Urban Cruiser into vehicle Baleno, the accused persons were apprehended and thus the accused persons were apprehended at the beginning of shifting and the Ganja which was loaded in the vehicle Urban Cruiser brought by co-accused may not be associated with the applicant, who admittedly was not the owner of the 'Ganja'.

9. It is further submitted that similarly placed co-accused Azeemuddin and Vinod Singh have been granted bail by this Court, vide orders dated 24.8.2023 and 29.08.2023 passed in Crl. Misc. Bail Application No. 7060 of 2022 and 15191 of 2022.

10. While drawing the attention of this Court towards the FIR/ recovery/seizure memo, it is submitted that information pertaining to the arrival of the applicant and other co-accused persons was available to the police party prior to arrival of the applicant and other co-accused persons, however, this information has not been reduced into writing either before or after the search and seizure and arrest and therefore the proceedings done or contraband recovered in utter violation of Section 42 of N.D.P.S. Act is void ab-initio.

11. It is further submitted that Section 50 of the N.D.P.S. Act has also not been complied in letter and spirit.

12. It is further submitted that the applicant is in jail in this case since 29.5.2022 and criminal history of six cases have been explained in paragraph 34 of the bail application, however, none of this case is pertaining to the N.D.P.S. Act and the applicant is not a convict and there is no apprehension that the accused-applicant after release on bail, may flee from the process of law or may otherwise misuse the liberty.

13. Learned A.G.A., on the other hand submits that having

regard to the recovery of commercial quantity of Ganja and keeping in view section 37(1)(b) of N.D.P.S. Act, the applicant is not entitled for bail.

14. Having heard learned counsel for the parties and having perused the record, it is evident that at the relevant point of time, on a trap being laid by the police party, two vehicles namely, Baleno and Urban Cruiser were found near the gate of Canal and when the 'Ganja' was being unloaded from the vehicle Urban Cruiser into the vehicle Baleno, the accused persons were apprehended and ganja to the tune of 240 kilogram was recovered. On being interrogated, three accused persons namely, Vinod Singh, Azeemuddin and the applicant confessed to have arrived at the spot to purchase 'Ganja' from the co-accused Rajesh Singh. The co-accused Rajesh Singh has also admitted to have brought the 'Ganja' in his vehicle Urban Cruiser. It is in this background, it is vehemently submitted by learned counsel for the applicant that applicant and other accused persons except Rajesh Singh have been arrested while unloading the contraband from one vehicle to another while the purchaser of the contraband were Vinod, Azeemuddin and applicant who have also brought vehicle Baleno and seller/supplier was the co-accused Rajesh Singh who had brought the 'Ganja' in his vehicle Urban Cruiser and it has not been specified by the prosecution as to what quantity of Ganja has been recovered from which vehicle and the Ganja which was loaded in Urban Cruiser brought by co-accused Rajesh Singh may not be associated with the applicant. Applicant is in jail in this case since 29.5.2022. Criminal history of the applicant has been explained. Not a single prosecution witness has been testified so far before the trial Court. It is also submitted on behalf of the applicant that despite getting information from the informer pertaining to arrival of the applicant and other co-accused persons with contraband, this information has not been reduced into writing either before or after the search/arrest which is a clear violation of section 42 of the N.D.P.S. Act. Charge sheet in the matter has already been filed. Presence of the applicant could be secured before the trial court by placing any adequate conditions. Identically placed co-accused persons, namely, Azeemuddin and Vinod Singh have already been granted bail by this Court.

15. 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 applicants have made out a case for bail. The bail application is, thus, **allowed**.

16. Let the applicant- **Ashish Singh** involved in the aforesaid case be released on bail on furnishing a 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) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

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

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

19. Observations made herein-above are only for the purpose of disposal of bail application and the same shall not have any bearing on the trial of the case.

**Order Date :- 10.10.2023**

Praveen