

**Court No. - 27**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 11866 of 2023

**Applicant :-** Mohammad Arif

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

**Counsel for Applicant :-** Umang Agarwal

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

**Hon'ble Brij Raj Singh,J.**

1. Heard Shri Umang Agarwal, learned counsel for the applicant, Shri Vishwas Saraswat, 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.125 of 2023, under Section 8/20 NDPS Act, Police Station Rupaidiha, District Bahraich.

3. It is submitted by learned counsel for the applicant that 950 gms of charas is alleged to have been recovered from the possession of the applicant which is below commercial quantity. He further submitted that provisions of Section 50 of NDPS Act has not been complied with. The search and seizure procedure was not followed before the Gazetted Officer. There is no independent eye witness of the said recovery. He submitted that on 8.05.2023, recovery memo was prepared but sample was sent on 17.05.2023 which is evident from Annexure 8 filed along with bail application itself. Learned counsel submitted that as per standing order, it is provided that between 72 hours, the sample should be sent but in the present case, there is delay of nine days in sending sample. Learned counsel submitted that recovery appears to be false and concocted and is highly doubtful. Learned counsel further submitted that criminal history of the applicant has been explained in para 8 of the rejoinder affidavit filed today. Learned counsel submitted that the applicant has undergone for more than six months since 08.05.2023.

4. Learned AGA opposed the prayer for bail but could not dispute the fact that contraband substance recovered from the possession of the applicant is below commercial quantity and there is delay of nine days in sending the sample which is violative of standing order of NDPS Act.

5. Without expressing any opinion on the merits of the case, after hearing learned counsel for the parties and looking to the fact that contraband substance recovered from the possession of the applicant is below commercial quantity; argument that period of incarceration is more than six months and argument that sample was sent after nine days; therefore, I am of the opinion that it is a fit case for grant of bail.

6. Let the applicant, **Mohammad Arif** 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.

7. 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 :- 2.11.2023**

Pks