

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12218 of 2023

Applicant :- Romi Chauhan

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

Counsel for Applicant :- Jay Kumar Soni, Pramod Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Supplementary affidavit filed on behalf of the applicant is taken on record.
2. Learned A.G.A. informs that he has procured complete instructions in the matter including upto date case diary of the case.
3. Heard 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- **Romi Chauhan** for grant of bail, in Case Crime No.37 of 2023, under Sections 8/20 of the Narcotic Drugs & Psychotropic Substances Act, Police Station Chinhath, District Lucknow, during trial.
5. 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.
6. It is further 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. It is further submitted that sample has not been taken as required by the provisions as contained under Section 52(A) of the N.D.P.S. Act as well as the guidelines issued by the Department of Revenue in the year 1989.
7. It is also submitted that no serious efforts have been made by the police party to procure independent public witness and the absence of independent public witness casts a cloud of suspicion over the whole prosecution story and even if the case

of the prosecution is believed, only 750 grams of 'charas' is shown to have been recovered from the possession of the applicant, which is much below the commercial quantity i.e. 1kg and therefore, the twin stringent conditions mentioned under Section 37(1)(b) of the N.D.P.S. Act would not attract in this case.

8. It is further submitted that the applicant is in jail in this case since 27.01.2023 and criminal history of 7 cases have been explained in para-13 of the bail applicant and in para-3 of the supplementary affidavit filed today. 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.

9. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that the applicant has committed an heinous offence moreover he is having criminal history of 7 cases, out of which four cases are pertaining to N.D.P.S. Act and having regard to the material/evidence available against the applicant, he is not entitled to be released on bail

10. Having heard learned counsel for the parties and having perused the record, it is evident that only 750 grams of 'charas' is shown to have been recovered from the possession of the applicant. Commercial quantity of the 'charas' is more than 1kg, thus the 'charas' allegedly recovered from the applicant is much below the commercial quantity and the twin stringent conditions mentioned under Section 37(1)(b) of the N.D.P.S. Act would not attract in this case. Various submissions have been raised by learned counsel for the applicant in order to show that mandatory provisions of the N.D.P.S. Act has been violated and the recovery as shown by the police is highly suspicious and doubtful and could not be believed. Per contra case of the prosecution appears to be that the applicant is having a long criminal history including four cases of N.D.P.S. Act, however, in all these cases, which have been shown as criminal history of the applicant, he has been released on bail by competent criminal court and nothing has been brought on record, which may suggest that the bail orders pertaining to the release of the applicant on bail have been challenged at any higher forum or have been cancelled by the same court. Applicant is in jail in this case since 27.01.2023. Presence of the applicant may be secured before the trial court by placing adequate conditions/restrictions.

11. 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**.

12. Let the accused/applicant- **Romi Chauhan** involved in above-mentioned case, be released on bail on his 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.

(iv). 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;

(v). In case, the applicant misuses the liberty of bail 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; and

(vi) 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 default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of his bail and proceed against him in accordance with law.

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

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

15. 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 :- 6.11.2023

Anupam S/-