

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14052 of 2022

Applicant :- Ekhlaq

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

Counsel for Applicant :- Rehan Ahmad Siddiqui,Atiya Abid

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

Heard learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.

This bail application has been moved by the accused/applicant-**Ekhlaq** for grant of bail, in Case Crime No.251/2022, under Sections 8/21 N.D.P.S. Act, Police Station- Sadarpur, District-Sitapur, during trial.

Learned counsel for the accused-applicant while pressing the bail application submits that the applicant has been falsely implicated in this case and he has not committed any offence nor any contraband has been recovered from his possession.

It is further submitted that mandatory provisions of Section 42 of the NDPS Act has not been complied as admittedly the police party was having prior information of the arrival of the applicant with contraband, however, this information has neither been recorded in writing before the alleged recovery or arrest and even after the alleged recovery or arrest, the information has not been deduced in writing.

It is further submitted that Section 50 of the NDPS Act has also been violated and the right of the applicant to be searched before a Magistrate or Gazetted Officer has not been communicated in a way as required by law established.

It is also submitted that even if the case of the prosecution is believed, the samples have not been taken in compliance of the mandatory provisions of Section 52 (A) of the NDPS Act and the guidelines made by the Department of Revenue of the year 1989 as affirmed by the Hon'ble Supreme Court in **Noor Aga vs. State of Punjab (2008) 16 SCC 417**.

It is next submitted that 210 gms of '*alprazolam*' powder is shown to have been recovered from the possession of the

applicant. The commercial quantity of the same starts from 100 gms. More over, the recovery is shown to have taken place on 22.08.2022 while the sample to the FSL has admittedly been sent on 02.09.2022 and thus, the link evidence in this regard is missing pertaining to the fact that samples allegedly taken at the spot were kept in a safe condition. The charge sheet has already been filed without obtaining the FSL report and as of now, it is only an apprehension that the recovered substance is contraband. The applicant is in jail in this case since 22.08.2022 and trial has not started yet. The applicant is not having any criminal history and there is no apprehension that after being released on bail the applicant may flee from the course of law or may otherwise misuse the liberty.

Learned A.G.A., on the other hand, opposes the prayer of bail of the applicant on the ground that the applicant is accused of carrying 210 gms of '*alprazolam*' powder, which is a commercial quantity and having regard to the twin conditions as mentioned under Section 37 (i) (b) of the NDPS Act, the applicant is not entitled to be released on bail.

Having heard learned counsel for the parties and having perused the record, it is evident that 210 gms of '*alprazolam*' powder is shown to have been recovered from the possession of the applicant. Various submissions have been raised by learned counsel for the applicant in order to show that recovery as shown from the applicant is highly improbable and could not be believed. It is also highlighted that Sections 42, 50 and 52 (A) of the NDPS Act as well as the guidelines issued by the Department of Revenue vide its circular of the year 1989 have not been complied pertaining to taking of samples. Admittedly, the samples have not been taken before the Magistrate and the same is allegedly taken on the spot. Reliance in this regard has been placed on the law laid down by the Hon'ble Supreme Court in ***Union of India Vs. Mohanlal and Ors. (2016) 3 SCC 379.***

Charge-sheet in this case has already been filed. Applicant is in jail in this case since 22.08.2022 without any previous criminal history. Thus, for the reasons mentioned hereinbefore as well as the period of incarceration of the applicant in this case, prima facie, the twin conditions as enshrined under Section 37 (i) (b) of the NDPS Act stands satisfied and a case for bail is made out in favour of the applicant. The presence of the applicant could be secured before the trial court by placing adequate conditions.

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**.

Let the accused/applicant- **Ekhlaq** 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.

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

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

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 of this Court on the merits of the case.

Order Date :- 18.10.2023

Gurpreet Singh