

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12291 of 2023

Applicant :- Amir Khan

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

Counsel for Applicant :- Gulam Mustafa

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Learned A.G.A. informs that she has procured complete instructions in the matter including up to date case diary of the case and the charge sheet in this case has already been submitted.
2. Heard learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.
3. This bail application has been moved by the accused/applicant- **Amir Khan** for grant of bail, in Case Crime No.197/2023, under Sections 41, 411, 413, 414, 34 I.P.C. & 3/25 of Arms Act & 18/20 of N.D.P.S. Act, Police Station- Dahi, District- Unnao, during trial.
4. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication and nothing as shown by the prosecution has been recovered from the possession of the applicant.
5. It is further submitted that case of the prosecution as is emerging from the arrest/ recovery memo/ first information report is to the tune that the informant, who was present at the spot along with other police personnels, was informed by a police informer about the applicant and other co-accused persons arising on motorcycles with contraband and believing on that information, the applicant and the other accused persons were intercepted and who confessed to be involved in motorcycle's theft and also that they are possessing illegal '*charas*' and after giving them option under Section 50 of the N.D.P.S. Act, their personal search was taken where from a country made pistol from each of the accused persons along with cartridges and 500 gms of *charas* is recovered from the carry bag possessed by each of the accused persons.

6. Highlighting the above facts, it is vehemently submitted that even if the case of the prosecution is taken on its face, it is stated that the informant was informed by the police informer about the expected arrival of the applicant and other co-accused persons, thus, the informant was having prior information of the arrival of the applicant and the other co-accused persons with contraband, but neither before nor after the recovery/ arrest, the information given by the informant was reduced into writing and in this way mandatory provisions as contained under Section 42 of the N.D.P.S. Act has been violated.

7. It is further submitted that apart from the instant case, two other cases have been slapped against the applicant with the same arrest, however, in both these cases, the applicant has granted the bail and the bail orders pertaining to these cases have been placed as Annexure Nos.2 & 3 to the bail application.

8. It is further submitted that mandatory provisions of Section 50 of N.D.P.S. Act has not been complied in letter and spirit and the right of the applicant to be searched before the Magistrate or a Gazetted Officer has not been given as required by the law established and therefore, the recovery as well as the arrest made in violation of mandatory provisions of Section 50 of the N.D.P.S. Act is *void ab initio*.

9. It is also submitted that even if the case of the prosecution is believed, 500 gms of 'charas' is shown to have been recovered from the applicant which is far below the minimum commercial quantity, i.e. 1 kg., therefore, the twin conditions as enumerated under Section 37 (i) (b) of the N.D.P.S. Act would not be attracted. The applicant is in jail in this case since 07.07.2023 and the criminal history of two cases has been explained, charge-sheet in this case has already been submitted 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 and the applicant is ready to cooperate in the investigation.

10. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that the applicant has committed an heinous offence and having regard to the material/evidence available against the applicant, he is not entitled to be released on bail, but could not controvert the other factual submissions made by learned counsel for the applicant.

11. Having heard learned counsel for the parties and having perused the record, it is reflected that the story of the prosecution pertaining to the arrest of the applicant and other co-accused persons and recovery of the country made pistol and

charas to the tune of 500 gms has been doubted by learned counsel for the applicant by making various submissions and it is submitted that Section 42, 50 of the N.D.P.S. Act has not been complied in letter and spirit. 500 gms. of *charas* is shown to have been recovered from the applicant. The commercial quantity of the same starts from 1kg, thus, the two stringent condition as enumerated under Section 37 (i) (b) of the N.D.P.S. Act would not be attracted. Two other criminal cases were slapped against the applicant with the arrest of the applicant in the instant case, however, in those cases, the applicant has been granted bail by competent criminal Courts. Thus, from before the alleged arrest of the applicant in the instant case, he was not having any criminal antecedent. Charge-sheet in this case has already been filed. Applicant is in jail in this case since 07.07.2023. Criminal history of two cases has adequately been explained. The presence of the applicant could be secured before the trial court by placing adequate conditions.

12. 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**.

13. Let the accused/applicant- **Amir Khan** 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.

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 of this Court on the merits of the case.

Order Date :- 16.10.2023

Gurpreet Singh