

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12309 of 2023

Applicant :- Rishu Singh

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

Counsel for Applicant :- Syed Anzar Husain, Faisal Husain, Shashank Bhushan Singh

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Counter affidavit filed by State is taken on record.
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- **Rishu Singh** for grant of bail, in Case Crime No.77 of 2023, under Sections 8/20 Narcotic Drugs & Psychotropic Substances Act 1985, Police Station Malipur, District Ambedkar Nagar, during trial.
4. 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.
5. It is further submitted that admittedly the police party was aware of the arrival of the applicant with contraband and information in this regard has been given by the informer to Police party which has not been recorded in writing and thus mandatory provision of Section 42 of the N.D.P.S. Act has been violated.
6. It is further submitted that specimen of the contraband has not been taken in accordance with the procedure prescribed under Section 52A of the N.D.P.S. Act as well as the Standing Order No.1/ 89 issued by the Department of Revenue, Ministry of Defence, Government of India.
7. It is also submitted that Section 50 of N.D.P.S. Act has also not been complied in letter and spirit and the right to be searched before the Magistrate or Gazetted Officer has not been

communicated in the manner wherein it should have been, thus the recovery and arrest in view of the same is *void ab-initio*.

8. It is further submitted that the arrest/recovery from the applicant is also under the cloud of suspicion in absence of independent public witnesses. Criminal history of two cases is alleged against the applicant, however, the same has been slapped along with the instant case and in both these cases, the applicant has been granted bail by the trial court. Identically placed co-accused person of the alleged crime, namely, Ashok Rai has been released on bail by this Court, vide order dated 07.11.2023 passed in Criminal Misc. Bail Application No.11717 of 2023.

9. It is vehemently submitted that the applicant is in jail in this case since 24.04.2023 and the trial has not been started yet and keeping in view the pendency of criminal cases before the trial courts, the same is not expected to conclude in near future. 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.

10. Learned counsel for the applicant further submits that neither in the arresting memo/ F.I.R. nor anywhere in the case diary it has been disclosed as to the substance which has been seized from the possession of the applicant is either consisting of flowering or fruiting tops of the plant of cannabis or the same was also comprising of stem and leaves, in this background the whole quantity shown to be 'Ganja' could not be believed.

11. It is also submitted that Hon'ble Supreme Court in ***Mohd. Muslim Vs. State (NCT of Delhi)***, MANU/SC/ 0320/2023 and ***Rabi Prakash Vs. State of Odisha***; MANU/SCOR/83201/2023 has opined that sting of the twin conditions enumerated in Section 37(1)(b) of the N.D.P.S. Act may be reduced having regard to surrounding circumstances of a particular case and the satisfaction of the court with regard to the twin condition mentioned in Section 37(1)(b) of the N.D.P.S. Act is prima facie and not conclusive.

12. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that commercial quantity of 'Ganja' has been recovered and keeping in view the twin conditions enumerated in Section 37(1)(b) of N.D.P.S. Act the applicant is not entitled to be released on bail. Learned A.G.A. has also submitted that Section 50 of NDPS Act as first is not applicable as the contraband is shown to have been recovered from a vehicle and secondly the search of the vehicle as well as of the applicant was done in front of the Circle Officer of Police, who

is a gazetted officer.

13. Having heard learned counsel for the parties and having perused the record, it is reflected that 48kg. and 250 grams of 'Ganja' is shown to have been recovered from the joint possession of the applicant and 4 other co-accused persons. Various submissions have been raised in order to show that recovery and arrest of the applicant is doubtful. It was highlighted that it was the duty of the prosecution to have sent the sample allegedly taken at the spot to the Forensic Lab immediately having regard to the circular issued by the Department of Revenue, Ministry of Finance, Government of India, which has not been done in this case. It was also highlighted that the possession of whole 'cannabis' plant is not punishable under N.D.P.S. Act keeping in view the definition of 'Ganja' provided in Section 2(iii) (b) of N.D.P.S. Act, wherein only the flowering or fruiting top of cannabis plant (excluding seeds and leaves) is punishable. It is also submitted that the police party has not written anywhere either in the recovery memo or even in any communication, while sending specimen to the Forensic Lab as to whether the whole quantity recovered from the possession of the applicant was consisting of flowering or fruiting top of cannabis plant and in this background it is submitted that the whole quantity of contraband shown to have been recovered from the possession of the applicant may not be termed as 'Ganja' in view of Section 2(iii) (b) of the N.D.P.S. Act. The criminal history of two cases has been adequately explained in para 29 of the bail application. Identically placed co-accused person of the alleged crime, namely, Ashok Rai has been released on bail by this Court. The applicant is in jail in this case since 24.04.2023. His presence may be secured before the trial court by placing adequate conditions

14. 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.

15. Let the accused/applicant- **Rishu Singh** 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.

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

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

18. 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 :- 16.11.2023

Anupam S/-