

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12401 of 2023

Applicant :- Imtiyaz

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

Counsel for Applicant :- Sultan Hasan Ibrahim, Syed Ahmad Abbas Zaidi

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Learned A.G.A. informs that he has procured complete instructions in the matter including up-to-date case diary and charge sheet in this case has also 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 on behalf of the accused-applicant/**Imtiyaz** for grant of bail, in Case Crime No.103 of 2023, under Section 8/21 N.D.P.S. Act, 1985 Police Station Fursatganj, District Raebareli during pendency of trial.
4. Learned counsel for accused-applicant while pressing the bail application submits that the accused-applicant has been falsely implicated in the instant case and nothing as claimed by the prosecution has been recovered from the possession of the applicant.
5. It is further submitted that mandatory provision of Section 42 of the N.D.P.S. Act has not been complied by the police party while admittedly they were having prior information of the arrival of applicant with 'contraband' and, therefore, the recovery as well as the arrest of the applicant is vitiated.
6. It is further submitted that Section 50 and 57 of the N.D.P.S. Act has not been complied in letter and spirit and no option, as required by law, to be searched before the Magistrate or Gazetted Officer has been given.
7. It is next submitted that even if the case of the prosecution is taken on its face, only 45 grams of 'diacetylmorphine/heroin' is shown to have been recovered from the possession of the applicant, which is far below the commercial quantity i.e. 250 grams and, thus, the two conditions as enumerated under

Section 37(1)(b) of the N.D.P.S. Act would not attract in this case.

8. It is further submitted that another accused person namely Jitendra Kumar Raidas is also shown to have been arrested by the police on the same day and time and recovery of 55 grams diacetylmorphine/heroine is also shown to have been affected from him and an F.I.R. i.e. Case Crime No.102 of 2023, under Section 8/21 N.D.P.S. Act, 1985 is shown to have been lodged against him, however, accused Jitendra Kumar Raidas of Case Crime No.102 of 2023 has been granted bail by this Court vide order dated 15.9.2023 passed in Criminal Misc. Bail Application No.11060 of 2023.

9. It is further submitted that the applicant is languishing in jail in this case since 08.08.2023 and he is not having any criminal history. Charge sheet in this case has already been filed 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. It is also submitted that despite having prior information of the arrival of applicant, no serious efforts appears to have been taken by the police party to procure independent public witnesses.

11. Learned A.G.A. on the other hand submits that the applicant is accused of heinous offence and, therefore, he is not entitled to be released on bail.

12. Having heard learned counsel for the parties and having perused the record, it is reflected that applicant is shown to have been apprehended with 45 grams of 'diacetylmorphine/heroine'. The commercial quantity of 'diacetylmorphine/heroine' starts from 250 grams. Thus, the quantity of 'heroine', which is alleged to have been recovered from the possession of the applicant much far below the commercial quantity. Various submissions have been raised on behalf of the applicant in order to demonstrate that the recovery and arrest of the applicant is *void ab initio* in the background of the fact that Sections 42, 50 and 57 of the N.D.P.S. Act has not been complied in letter and spirit. Applicant is languishing in jail in this case since 08.08.2023 without any criminal history. Charge sheet in this case has also been filed and the presence of the applicant may be secured before the trial court by placing adequate conditions.

13. 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 allowed.

14. Let the accused-applicant/**Imtiyaz** involved in aforesaid case be released on bail on 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.

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

16. 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 :- 18.10.2023

Anupam S/-