Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12438 of 2023

Applicant :- Uma Shankar Rajbhar

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

Counsel for Applicant :- Manish Mani Sharma

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Heard Shri Paritosh Shukla, Advocate holding brief of Shri Manish Mani Sharma, learned counsel for the applicant, Shri Hari Shanker Maurya, learned AGA for the State and perused the record.

2. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.203 of 2023, under Sections 8/20 NDPS Act, Police Station Sammanpur, District Ambedkar Nagar.

3. It is contended by learned counsel for the applicant that 7 kgs 150 gms of Ganja is alleged to have been recovered from the joint possession of the applicant and co-accused Ashok Yadav, which is below commercial quantity. It is contended that the recovery as shown is based on the basis of false and concocted story. Learned counsel submitted that the applicant was not apprised by the police that he has right to be searched before the Gazetted Officer rather it is mentioned that he could be searched before any Magistrate. The Naib Tehsildar has come over the spot and recovery memo was prepared. Thus, Section 50 of NDPS Act is violated and search and seizure procedure has not been followed accordance to law. Learned counsel further contended that there is no independent witness of the case. The applicant has no criminal history. The applicant is in jail since 14.08.2023.

4. Learned AGA opposed the prayer for bail but could not dispute the fact that the alleged contraband substance recovered from the possession of the applicant is below commercial quantity.

5. Without expressing any opinion on the merits of the case, after hearing learned counsel for the parties and considering the argument that contraband substance i.e. ganja recovered from the possession of the applicant is below commercial quantity, argument that there is no independent eye witness of the said recovery, therefore, I am of the opinion that the applicant is entitled to be released on bail.

6. Let the applicant, **Uma Shankar Rajbhar** be released on bail in the above case crime number on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of Court concerned with the following conditions :-

(i) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(ii) 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.

(iii) In case, the applicant misuses the liberty of bail during trial 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.

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

7. It is made clear that the observations made in this order are limited to the purpose of determination of this bail application and will in no way be construed as an expression on the merits of the case. The Trial Court shall be absolutely free to arrive at its independent conclusions on the basis of evidence led unaffected by anything in this order.

Order Date :- 6.12.2023

Pks

Digitally signed by :-
POOJA SETH
High Court of Judicature at Allahabad,
Lucknow Bench