

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12487 of 2023

Applicant :- Arjun 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 Brij Raj Singh,J.

1. Heard Shri Gulam Mustafa, learned counsel for the applicant, Shri G.D. Bhatt, learned AGA-I 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.197 of 2023, under Sections 41, 411, 413, 414, 34 IPC, Section 3/25 Arms Act and Section 18/20 NDPS Act, Police Station Dahi, District Unnao.

3. It is submitted by learned counsel for the applicant that 500 gms of charas is alleged to have been recovered from the possession of the applicant which is below commercial quantity. It is further submitted that Section 3/25 Arms Act has been imposed against the applicant falsely. He further submitted that provisions of Section 50 of NDPS Act has not been followed and the applicant was not searched before the Gazetted Officer and there is no independent eye witness of the said recovery. He submitted that criminal history of the applicant has been explained in para 14 of the bail application and two cases have been imposed against the applicant on single arrest.

4. Learned counsel further submitted that co-accused Amir Khan having identical role has been granted bail in Criminal Misc. Bail Application No.12291 of 2023 and detailed order has been passed on 16.10.2023 and the case of the applicant is at par with the case of co-accused therefore, the applicant is also entitled to be enlarged on bail. The applicant is in jail since 07.07.2023.

5. Learned AGA opposed the prayer for bail but could not dispute the fact that 500 gms of charas has been recovered from the possession of the applicant which is below commercial quantity and the other co-accused having identical role has been granted bail.

6. Without expressing any opinion on the merits of the case, after hearing learned counsel for the parties and looking to the fact that small quantity of 500 gms of charas has been recovered from the possession of the applicant, argument that the other co-accused Amir Khan having identical role has been granted bail and the case of the

applicant is at par with co-accused, I am of the opinion that the applicant is entitled to be released on bail.

7. Let the applicant, **Arjun Khan** 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.

8. 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 :- 27.10.2023

Pks