

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12573 of 2023

Applicant :- Brijesh Patel

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

Counsel for Applicant :- Girish Kumar Pandey, Sher Bahadur Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Vide order dated 8.11.2023, in view of the two stringent conditions mentioned in Section 37(1) (b) of N.D.P.S. Act, a last opportunity was provided to State to file counter affidavit, however, it is informed that counter affidavit is not prepared. It is also informed that complete instructions including upto date case diary has been procured. Charge sheet in this case has already been submitted.

2. Heard Shri Girish Kumar Pandey, 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- **Brijesh Patel** for grant of bail, in Case Crime No. 187 of 2023, under Sections 8/20/25/29 N.D.P.S. Act, Police Station Aliganj, District Ambedkar Nagar, 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 incriminating as shown by the prosecution has been recovered either from the possession or pointing out of the applicant.

5. It is further submitted that the story of the prosecution as narrated in the recovery/ arresting memo/ FIR is to the tune that on 22.8.2023 at about 6.10 P.M. the applicant along with other co-accused persons was apprehended while sitting in a vehicle bearing No. DL2CAS2285 and on being searched, about 40 K.G. of 'Ganja' has been recovered from the vehicle.

6. Highlighting the above fact, it is vehemently submitted that admittedly the information with regard to arrival of the

applicant with contraband was available to the police party and the same has not been reduced into writing either before, during or after the alleged searched and seizure and arrest, thus Section 42 of the N.D.P.S. Act has been patently violated.

7. It is further submitted that the police party was having ample time to procure independent witnesses, however, no serious efforts has been made to procure the same, casting a cloud of suspicion over the prosecution story.

8. It is further Submitted that Section 50 of N.D.P.S. Act has also not been complied in letter and spirit and the manner in which the samples have been collected by the police party, the same appears to have been collected in patent violation of the guideline issued by the Ministry of Finance Department of Revenue of year 1989. It is also submitted that the applicant is a student and his only fault is that he had boarded the taxi and he was not in the knowledge that some contraband is being transported by the same and therefore he was in consensus possession of the same.

9. Learned counsel for the applicant while drawing the attention of this Court towards the contraband allegedly shown to have been recovered from the possession of the applicant as mentioned in the FIR submits that no description of the same has been given as to whether the 'Ganja' recovered from the vehicle was of consisting of flowering or fruiting part of the cannabis plant or the same was also containing stems and leaves. The attention of this Court has been drawn to Section 2(iii) (b) of N.D.P.S. Act wherein the definition of 'Ganja' has been provided and only flowering or fruiting tops of the cannabis plant has been shown as punishable.

10. It is further submitted that the applicant is in jail in this case since 22.8.2023 and he is not having any criminal antecedent. Charge sheet in this case has already been submitted and there is no apprehension that the accused-applicant after release on bail, may flee from the process of law or may otherwise misuse the liberty.

11. Learned A.G.A. on the other hand submits that matter pertains to recovery of commercial quantity of 'Ganja' and having regard to the twin conditions mentioned in Section 37 (1) (b) of the N.D.P.S. Act, the applicant is not entitled to be released on bail. Moreover Section 50 of N.D.P.S. Act has been complied in letter and spirit as such the search has been performed by the Magistrate/ Naib Tahsildar.

12. Having heard learned counsel for the parties and having

perused the record, it is evident that the allegation against the applicant is to the tune that he was traveling in a taxi from which about 40 K.G. of 'Ganja' is shown to have been recovered. The defence of the applicant appears to be that he is a student and he was traveling as passenger in the taxi and he was not in conscious possession of the 'Ganja'. Various submissions have been made in order to show that the story as shown by the prosecution of recovery of 40 K.G. 'Ganja' from the vehicle wherein the applicant was travelling is suffering from inherent weakness and highly improbable and could not be believed. It is also stated that mandatory provisions of Sections 42, 50 and 52-A of the N.D.P.S. Act have not been complied. It is also urged that the prosecution has not specified in clear terms as to the whether the whole contraband recovered from the vehicle was all consist of flowering or fruiting tops of the cannabis plant and therefore the whole quantity of 40 K.G. 'Ganja' may not be termed punishable as defined under section 2(iii) (b) of the N.D.P.S. Act .

13. Keeping in view all the facts and circumstances of the case and also having an eye on the period of detention already undergone by the applicant and the submissions made by learned counsel for the applicant specifically with regard to the definition of 'Ganja' provided under Section 2-(iii)(b) of N.D.P.S. Act as well as the guidelines issued by the Ministry of Finance, Department of Revenue in Year 1989, wherein a comprehensive procedure has been prescribed for taking of specimen, the satisfaction as desired in Section 37 (1) (b) of N.D.P.S. Act stands satisfied. The applicant is in jail in this case since 22.8.2023 and he is not having any criminal antecedent. Charge sheet in this case has already been filed. His presence may be secured before the trial court by placing adequate conditions.

14. 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 and demerits of the case, I am of the considered view that applicant has made out a case for bail. The bail application is **allowed**.

15. Let the applicant- **Brijesh Patel** involved in the 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.

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 are only for the purpose of disposal of bail application and the same shall not have any bearing on the trial of the case.

Order Date :- 22.11.2023

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