

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12707 of 2023

Applicant :- Dharmendra Raidas @ Rajnish

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

Counsel for Applicant :- Sandhya Devi,Babita Singh,Neha Chaurasia,Prabhat Rathore

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 upto date case diary of the case and the charge sheet has already been submitted in this case..

2. Heard Ms. Sandhya Devi, 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- **Dharmendra Raidas @ Rajnish** for grant of bail, in Case Crime No.432 of 2023, under Section 8/20 N.D.P.S. Act, Police Station Kotwali City, District Hardoi, 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 as claimed by the prosecution has been recovered from the possession of the applicant.

5. Elaborating further it is submitted that the case of the prosecution as is evident from the FIR, arresting/ recovery memo is to the tune that on 26.6.2023 the applicant was apprehended by the police and on informing the police personnel that he is having illegal 'Ganja' with him, consent letter was prepared and on being searched 1 K.G. and 06 Gram (1 K.G. & 600 grams) Ganja is shown to have been recovered.

6. Learned counsel for the applicant vehemently submits that at first Section 50 of the N.d.P.S. Act has not been complied as it is claimed by the police party that information of the possession of 'Ganja' of the applicant was given to the Circle Officer of the Police, who was a gazetted officer but as he was busy in some

government work he could not come on the spot and on that consent letter was obtained and personal search was performed.

Thus, recovery and arrest of the applicant in violation of Section 50 of N.D.P.S. Act is void ab-initio.

7. It is also submitted that even if the prosecution case is believed, only leaves of 'cannabis' is shown to have been recovered from applicant, which would not constitute any offence having regard to the definition of 'Ganja' provided under Section 2(iii) (b) of N.D.P.S. Act as the leaves of the 'cannabis' plant may only be considered if the same is accompanied with the flowering of fruiting tops.

8. It is also submitted that criminal history of 18 cases have been shown against the applicant, however in all these cases the applicant has been granted bail and keeping in view the definition of 'Ganja' as provided under Section 2(iii) (b) of the N.D.P.S. Act criminal history would not be having any bearing on the fate of the instant application and the applicant could not be prosecuted for the possession of only leaves of 'Ganja'. The criminal history of the applicant is immaterial, however, the same has been explained in paragraph 20 of the bail application. The applicant is in jail in this case since 27.06.2023. The recovery of 'Ganja' is much below commercial quantity i.e. 20 K.G. and thus twin conditions enumerated under Section 37 (1) (b) N.D.P.S. Act would not attract.

9. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that the applicant is having long criminal history, therefore he is not entitled to be released on bail.

10. Having heard learned counsel for the parties and having perused the record, it is evident that the applicant is shown to be having criminal history of 18 cases, however, in all these cases he appears to have been released on bail. There are many bail orders available on record which suggests that the facility of bail has been extended to the applicant while noticing his criminal history, it is to be recalled that only on the basis of criminal history of an under trial the facility of bail may not be negated and the heinousness of the offence coupled with materiel/ evidence tendered in support of the same would also be having bearing on the fate of bail application. For the purpose of only releasing the applicant on bail, I find substance in the submissions made by learned counsel for the applicant with regard to the fact that Section 50 of N.D.P.S. Act is not complied in letter and spirit, only leaves of 'cannabis' plant is shown recovered which may not be punishable under the relevant provisions of N.d.P.S. Act and Section 37 (1) (b) of

N.D.P.S. Act would not attract in the instant case as the recovery is of 'ganja', which is below commercial quantity. In result the facility of bail may be safely extended even taking into account the criminal history of the applicnat. The bail application is, thus, **allowed**.

11. Let the accused/applicant- **Dharmendra Raidas @ Rainish** 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.

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

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

14. 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 :- 30.10.2023

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