

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13298 of 2023

Applicant :- Harshendra Singh Urf Raja

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

Counsel for Applicant :- Dhirendra Pratap Singh

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Heard Sri Dhirendra Pratap Singh, learned counsel for the applicant and Sri Ramesh Kumar Singh, learned A.G.A. for the State.

2. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.36 of 2022 under sections 420, 467, 468, 471 , 272, 304 IPC and Section 60(A) of Excise Act, Police Station Mill Area, District Raebareli

3. It has been submitted by learned counsel for the applicant that as per recovery memo, it is mentioned that four bags of country-made liquor were found in the village Roopamau. The said information was given by Rahul Maurya. Thereafter police recovered country-made liquor and in the recovery memo, name of the applicant has not come into light. Thereafter co-accused Kunwar Praveen Singh @ Ketan and Akhand Pratap Singh @ Rajan were examined by the police and in the statement of Kunwar Praveen Singh, it is stated that Dhirendra Bahadur Singh had instructed to throw 21 container of country-made liquor alongwith the applicant and same was thrown at Gilha-Ka-Purwa near Sharda Canal. The said place pertaining to other indicated in Case Crime No. 37 of 2022 Police Station Mill Area, District Raebareli .The present case is pertaining to four bags of alleged country-made liquor which is mentioned in the recovery memo and the place is mentioned Roopamau Kolahai-Ka-Purwa but the applicant is not named by the co-accused that he was involved in the the commission of crime.The same fact has been recorded by co-accused- Akhand Pratap Singh @ Rajan. It has been submitted by learned counsel for the applicant that in the present case where four bags of country-made liquor have been recovered but the

applicant is not named and there is no allegation that he had thrown the said bags to the place as mentioned by the co-accused.

4. Learned counsel for the applicant has submitted that the applicant has been granted bail in case crime no. 37 of 2022 under sections 420,467,468,471,272 IPC and 60(ka) of Excise Act vide order dated 05.10.2023 by the court below. He has further submitted that the applicant has been granted bail in main case bearing Case Crime No.0029 of 2022, under sections 272, 302, 420, 467, 468, 471, 328, 120-B, 259, 260 IPC and Section 60 (A)/72 of U.P. Trade Tax & Excise Act and Section 63 of Copy Right Act,,104 Trade Mark Act, Police Station Maharajganj, District Raebareli.

5. Learned counsel for the applicant has submitted that co-accused Arshad @ Sonu, who is license holder, has been granted bail in the present case on 03.07.2023 by the court below. It has been submitted by learned counsel for the applicant that the applicant has been falsely implicated in the present case and co-accused have been granted bail by the court below and the applicants in jail since 26.03.2022.

6. Learned Additional Government Advocate has opposed the prayer for bail

7. Without expressing any opinion on the merits of the case and after hearing learned counsel for the parties and looking into overall facts and circumstances of the case as well as the argument that the applicant is not named in the alleged recovery, the argument that co-accused Arshad @ Sonu, who is license holder has been granted bail by the court below, therefore, I am of the opinion that the applicant is entitled to be released on bail.

8. Let the applicant, namely, **Harshendra Singh Urf Raja**, 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.

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 :- 21.12.2023

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