

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13382 of 2023

Applicant :- Kasim @ Kanau

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

Counsel for Applicant :- Arvind Kumar Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard Shri Arvind Kumar Tiwari, learned counsel for the accused/applicant as well as learned A.G.A. for the State and perused the record.

2. This bail application has been moved by the accused/applicant- **Kasim@Kanau** for grant of bail, in Case Crime No. 214 of 2023, under Section 8/20 Narcotic Drugs and Psychotropic Substances Act, Police Station Hardatnagar Girant, District Shrawasti, during trial.

3. Learned counsel for the accused-applicant while pressing the bail application submits that the accused-applicant has falsely been implicated in the instant case.

4. It is further submitted that on 20.09.2023, the First Information Report has been lodged against the applicant on an information provided by the informer to the police party. On his information, the applicant was arrested and searched and after preparing the recovery memo, 680gm Charas has been shown to be recovered from his possession. It is also submitted that section 50 of the N.D.P.S Act has also not been complied in letter and spirit and the right to be searched before the gazetted officer or magistrate has not been communicated as the same was required by established principles of law.

5. It is further submitted that admittedly the police party was aware of the arrival of the applicant with contraband and information in this regard has been given by the informer to Police party which has not been recorded in writing and thus mandatory provision of Section 42 of the N.D.P.S. Act has been violated.

6. It is also submitted that Specimen of the contraband has not been taken in accordance with the procedure prescribed under

Section 52 A of the N.D.P.S. Act as well as the Standing Order No.1/1989 issued by the Department of Revenue, Ministry of Defence, Government of India.

7. It is further submitted that the applicant is having criminal history of one case in which he has been granted bail by a Coordinate bench of this Court vide order dated, 22.07.2022 passed in Crl. Misc. Bail Application No. 8133 of 2022, the copy of which has been placed on record as Annexure No. 2 to the bail application.

8. It is also submitted that no serious efforts have been made by the police party to procure independent public witness and the absence of independent public witness casts a cloud of suspicion over the whole prosecution story and even if the case of the prosecution is believed, only 680 grams of 'Charas' is shown to have been recovered from the possession of the applicant, which is below the commercial quantity i.e. 1k.g. and, therefore, the twin stringent conditions mentioned under Section 37(1)(b) of the N.D.P.S. Act would not attract in this case.

9. It is further submitted that the applicant is in jail in this case since 20.09.2023 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.

10. Learned A.G.A., on the other hand submits that the illegal act of the applicant is grave and as such he is not entitled to be released on bail, however, he could not confront the factual submissions made on behalf of the applicant that the quantity of contraband allegedly recovered from the possession of the applicant is below the commercial quantity.

11. Having heard learned counsel for the parties and perused the record, it is reflected that 680 grams of 'Charas' is shown to have been recovered from the possession of applicant. Commercial quantity of the 'Charas' is 1 k.g. and, thus, the 'Charas' allegedly recovered from the applicant is below the commercial quantity and the twin stringent conditions mentioned under Section 37(1)(b) of the N.D.P.S. Act would not attract in this case. Various submissions have been raised by learned counsel for the applicant in order to show that mandatory provisions of the N.D.P.S. Act has been violated and the recovery, as shown by the police, is highly suspicious and doubtful and could not be believed. Nothing has been shown on behalf of the prosecution, which may persuade this Court to further detain the applicant in jail. Applicant is in jail in this case since 20.09.2023. Presence of the applicant may be

secured before the trial court by placing adequate conditions/restrictions

12. 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**.

13. Let the applicant- **Kasim@Kanau** 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.

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

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

16. 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 :- 9.11.2023

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