

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13419 of 2023

Applicant :- Shyam Singh

Opposite Party :- Union Of India Thru. N.C.B. Lko

Counsel for Applicant :- Raghvendra P. Singh, Vijay Pratap Singh

Counsel for Opposite Party :- Akhilesh Kumar Awasthi

Hon'ble Mohd. Faiz Alam Khan, J.

1. Shri Akhilesh Kumar Awasthi, learned counsel for the Narcotics Control Bureau submits that he has procured complete instructions in the matter.

2. Heard Shri Vijay Pratap Singh, learned counsel for the accused-applicant as well as Shri Akhilesh Kumar Awasthi, learned counsel appearing for the N.C.B. and perused the record.

3. This bail application has been moved by the accused/applicant- **Shyam Singh** for grant of bail, in F.I.R./N.C.B./L.Z.U. No. 20 of 2023, under Sections 8C/21/29 of the N.D.P.S. Act, Police Station N.C.B. Lucknow, District Lucknow during trial.

4. Learned counsel for the accused-applicant while pressing the bail application submits that the applicant has been falsely implicated in this case and the story, as cooked up by the N.C.B. is highly concocted, improbable and could not be believed on the touchstone of probability.

5. It is further submitted that the case of the prosecution, as is reflected from the arrest/seizure memo is to the tune that a discrete information received from the S.T.F. Headquarter, Lucknow that the applicant is expected to arrive at a particular place with '*heroine*' (*diacetylmorphine*) and is expected to deliver it to one Mohd. Javed at Thakurganj, Lucknow, the same was reduced into writing and a team was constituted and on the applicant being apprehended, 190 grams of '*diacetylmorphine*' has been recovered from his possession, which was allegedly sealed on the spot.

6. Highlighting the above, it is vehemently submitted that even if the story, as cooked up by the prosecution is believed, the mandatory provision of Section 50 of the N.D.P.S. Act has been clearly violated, as no search or seizure has been effected in

present of the gazetted officer or the Magistrate and no right has been informed to the applicant of being searched before a gazetted officer or the Magistrate. Therefore, the alleged recovery as well as the arrest of the applicant is *void ab initio* due to non compliance of Section 50 of the N.D.P.S. Act.

7. It is also submitted that the recovery as well as the arrest of the applicant is also doubtful in absence of independent public witnesses while there was ample occasion and opportunity for the N.C.B. to procure the independent public witnesses. However, no serious efforts appears to have been made in this direction.

8. It is further submitted that even if the case of the prosecution is believed, the specimen has also not been collected in presence of the Magistrate and, thus, Section 52-A of the N.D.P.S. Act has also been violated and only 190 grams of '*heroine*' (*diacetylmorphine*) is shown to have been recovered from the possession of the applicant, which is far below the commercial quantity i.e. 250 grams. Thus, the twin conditions as enumerated under Section 37(1)(b) of the N.D.P.S. Act would not attract.

9. It is next submitted that the applicant is in jail in this case since 18.09.2023 and he is not having any criminal history. Applicant is ready to co-operate in any inquiry/investigation, which would be conducted by the N.C.B. and would remain present before the investigating officer as and when his presence would be required and there is no apprehension that after being released on bail he may flee from the course of law or may otherwise misuse the liberty.

10. Shri Akhilesh Kumar Awasthi, learned counsel representing the Narcotics Control Bureau, however, opposes the prayer of bail of the applicant on the ground that the applicant has been apprehended while possessing 190 grams of '*heroine*' (*diacetylmorphine*) and, therefore, he is not entitled to be released on bail.

11. Having heard learned counsel for the parties and having perused the record, it is reflected that the allegations against the applicant is that he was apprehended while he was possessing 190 grams of '*heroine*' (*diacetylmorphine*). Learned counsel for the applicant has submitted with considerable force that even if the case of the prosecution is believed as it is, Section 50 of the N.D.P.S. Act has not been followed and this condition is alone to vitiate the recovery as well as the arrest. It is also highlighted that Section 52-A of the N.D.P.S. Act has not been adhered to the quantity of contraband i.e. 190 grams of '*heroine*'

(*diacetylmorphine*), allegedly recovered from the possession of the applicant is far below the commercial quantity i.e. 250 grams and the twin conditions, as enumerated under Section 37(1)(b) of the N.D.P.S. Act would not attract. Applicant is in jail in this case since 18.09.2023 without any criminal antecedents and the presence of the applicant may be secured before the trial court by placing adequate conditions/restrictions.

12. Having regard to the overall facts and circumstances of the case and 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 of the case, I am of the considered view that applicant has made out a case for bail. The bail application is thus **allowed**.

13. Let the accused/applicant- **Shyam Singh** 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 will co-operate in the investigation and will remain present before the inquiry officer/investigating officer as and when his presence would be required and for that purpose shall give his mobile phone number along with an undertaking to this effect before the trial Court.

(ii) The applicant shall not tamper with the prosecution evidence by intimidating/pressurizing the witnesses, during the investigation or trial.

(iii) The applicant shall cooperate in the trial sincerely without seeking any adjournment.

(iv) 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 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 :- 17.11.2023/Praveen