Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13565 of 2023

Applicant :- Mohd.Saleem
Opposite Party :- State Of U.P. Thru. Prin.Secy. Home Deptt.
Counsel for Applicant :- Amit Kumar Awasthi,Ashish Mishra
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. Thus, it appears that on the basis of material placed on record, the bail plea of the applicant may be adjudicated.

2. Heard Shri Amit Kumar Awasthi 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- **Mohd. Saleem** for grant of bail in Case Crime No. 498 of 2023, under Section 8, 22 and 29 and of the Narcotic Drugs & Psychotropic Substances Act and 4/25 of Arms Act, Police Station Bhira, District Kheri, 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 no contraband, as claimed by the prosecution, has been recovered from the possession of the applicant.

5. It is further submitted that the secret information allegedly received from the informer has not been reduced into writing either before or after recovery/arrest of the applicant, thus, mandatory provision of Section 42 of N.D.P.S. Act has been violated. 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. It is further submitted that sample has also not been taken as required by the provisions as contained under Section 52(A) of the N.D.P.S. Act as well as in the guidelines issued by the Department of Revenue in the year 1989.

6. 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 06 grams of 'smack' is shown to have been recovered from the possession of the applicant and 110 grams from the car wherein he was sitting, which together is much below the commercial quantity i.e. 250 grams 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. It is further submitted that the applicant is in jail in this case since 07.10.2023 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.

7. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that the applicant has committed a heinous offence and having regard to the material/evidence available against the applicant, he is not entitled to be released on bail.

8. Having heard learned counsel for the parties and having perused the record, it is evident that only 06 grams of 'smack' is shown to have been recovered from the possession of the applicant and 110 grams of Smack is shown to have been recovered from the vehicle wherein the accused applicant and other accused person were travelling. Commercial quantity of the 'smack' is 250 grams and, thus, the 'smack' allegedly recovered from the applicant and from co-accused is much 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 07.10.2023. Presence of the applicant may be secured before the trial court by placing adequate conditions/restrictions.

9. 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.***

10. Let the accused/applicant- **Mohd. Saleem** 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.

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

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

13. 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 :- 9.11.2023
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Digitally signed by :-
MOHD UMAR KHAN
High Court of Judicature at Allahabad,
Lucknow Bench