

**Court No. - 14**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 13990 of 2023

**Applicant :-** Shafeer Ahmad And 2 Others

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

**Counsel for Applicant :-** Avinash Pandey,Rahul Kumar

**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.
2. Heard learned counsel for the accused-applicants as well as learned A.G.A. for the State and perused the record.
3. This bail application has been moved by the accused/applicants- **Shafeer Ahmad, Shakeel Ahmad** and **Nafees Ahmad** for grant of bail, in Case Crime No.0052 of 2023, under Sections 8B/18C of the N.D.P.S. Act, Police Station Raniganj, District Pratapgarh, during trial.
4. Learned counsel for the accused-applicants while pressing the bail application submits that the applicants have been falsely implicated in this case and he has not committed any offence as claimed by the prosecution.
5. It is further submitted that F.I.R. of this case has been lodged by the Station House Officer, Police Station Raniganj, District Pratapgarh alleging that on a report submitted by the Revenue Official, opium plants have been found planted in the bhumidhari land of the applicants and in this regard a letter was sent to the Zonal Director of the N.C.B., Lucknow and the plants were preserved.
6. It is vehemently submitted on behalf of the applicants that the F.I.R. is vague, concocted and could not be believed as no area has been mentioned in the F.I.R. or in the statement of any witness, wherein the crop of poppy plant is stated to have been found even no assessment of yield of these plants has been made by any authority including N.C.B. to which communication is alleged to have been sent and therefore, it could not be assessed at this point of time as to what could be

the yield of these plants of poppy, which are shown to have been planted in the bhumidhari land of the applicants.

7. It is further submitted that though it is alleged that some of the plants taken from the land of the applicants have been preserved and sent to the forensic lab, however, the sample has not been taken in pursuance of the guidelines issued by the Revenue Department, Ministry of Finance of the year 1989 and whole prosecution story appears to be in doubt in absence of any independent public witness and the witnesses, which have been shown by the police party as witnesses of seizure, are the pocket witness of the police. Even if the case of the prosecution is taken on its face, the offence appears to be punishable with 10 years imprisonment. Identically placed co-accused person of the alleged crime, namely, Sanjay Maurya has been released on bail by this Court vide order dated 16.11.2023 passed in Criminal Misc. Bail Application No.12745 of 2023.

8. It is next submitted that applicants are in jail in this case since 14.09.2023 and they are not having any criminal history, charge-sheet in this case has already been submitted and there is no apprehension that after being released on bail the applicants may flee from the course of law or may otherwise misuse the liberty.

9. Learned A.G.A., however, opposes the prayer of bail of the applicants on the ground that the applicants have committed an heinous offence and having regard to the fact that plantation of opium plants has been found in their bhumidhari land, the same would be deemed to be in their possession and therefore, applicants are not entitled to be released on bail.

10. Having heard learned counsel for the parties and having perused the record, it is evident that accusation of the applicants is to the tune that in their bhumidhari land poppy plant is found to have been planted, however, it has not been mentioned either in the F.I.R. or in the statement of any witness as to how much area was used by the applicants for the purpose of planting poppy plants. A letter is shown to have been written by the Revenue Authority to the N.C.B., however, nothing has been brought on record, which may suggest that any action has been taken by the N.C.B. with regard to the said communication and it has not been specified anywhere as to what yield could have been fetched by the crop of these plants. Charge-sheet in this case has already been filed. Identically placed co-accused person of the alleged crime, namely, Sanjay Maurya has been released on bail by this Court. Applicants are in jail in this case since 14.09.2023 without any previous criminal history. The presence of the applicants could be secured before the trial

court by placing adequate conditions. Having regard to all the facts and circumstances of the case, applicability of Section 37(1)(b) of the N.D.P.S. Act is in doubt.

11. 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 applicants have made out a case for bail. The bail application is thus **allowed**.

12. Let the accused/applicants- **Shafeer Ahmad, Shakeel Ahmad** and **Nafees Ahmad** involved in above-mentioned case, be released on bail on their furnishing a personal bond with two sureties in the like amount to the satisfaction of the court concerned subject to following conditions:-

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

(ii) The applicants shall cooperate in the trial sincerely without seeking any adjournment.

(iii) The applicants shall not indulge in any criminal activity or commission of any crime after being released on bail.

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

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

15. 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 of this Court on the merits of the case.

**Order Date :- 28.11.2023**

Anupam S/-