

Court No. - 16

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14217 of 2023

Applicant :- Shankar Lal

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

Counsel for Applicant :- Rajesh Kumar, Ashish Kumar Singh, Suhail Kashif

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi, J.

1. Heard Sri Suhail Kashif learned counsel for the applicant, Sri A.K. Singh learned A.G.A. for the State and perused the records.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 302 of 2023, under Sections 8/21 N.D.P.S. Act, registered at Police Station Dariyabad, District Barabanki.

3. The aforesaid case has been registered on the basis of an F.I.R. lodged on 08.10.2023, against two persons, including the applicant alleging that the accused persons were apprehended on the basis of information received from a mukhbir and they confessed having morphine in their possession. The Circle Officer Ram Sanahi Ghat was called on the spot telephonically and search of the accused persons was carried out in his presence. 154 grams morphine was recovered from the possession of applicant and 133 grams morphine was recovered from the possession of co-accused person.

4. In the affidavit filed in support of bail application, it has been stated that the applicant is innocent and he has been falsely implicated in the present case and he has no criminal history.

5. Learned counsel for the applicant has submitted that co-accused person Dharampal has been granted bail in the present case by means of the order dated 29.11.2023 passed by this Court in Criminal Misc Bail Application No.14032 of 2023.

6. The learned A.G.A. has opposed the prayer for bail and on the basis of instructions, he has submitted that as per the analysis report of the substance recovered from the accused persons, it has been found to be morphine. However, there is

nothing in the instructions provided to the learned A.G.A. that the sample of the substance recovered was taken in presence of the Magistrate as also in the presence of accused persons.

7. Having considered the aforesaid facts and circumstances of the case and keeping in view the fact that prima facie it appears that the applicant was not told about his right to get himself searched in presence of Magistrate; the search was made in presence of the Circle Officer, who being a police officer himself, is not an independent person; that samples of the substance recovered have also not been drawn in accordance with the provisions contained in Section 52-A of N.D.P.S Act and that co-accused person has already been granted bail and without making any observation, which may affect the merits of the case, I am of the view that the aforesaid facts are sufficient for making out a case for enlargement of the applicant on bail in the aforesaid crime.

8. Accordingly, this bail application stands allowed.

9. Let the applicant-**Shankar Lal** be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of magistrate/court concerned, subject to following conditions:-

- (i) the applicant shall not tamper with the prosecution evidence;
- (ii) the applicant shall not pressurize the prosecution witnesses;
- (iii) the applicant shall appear on each and every date fixed by the trial court.

Order Date :- 4.12.2023

Renu/-