

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14268 of 2023

Applicant :- Mobin Nadak @ Loha

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

Counsel for Applicant :- Hari Om Pandey, Ashutosh Kumar Singh

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 and investigation of this case is still pending.
2. Heard 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- **Mobin Nadak @ Loha** for grant of bail, in Case Crime No.367 of 2023, under Sections 8/20 of the Narcotic Drugs & Psychotropic Substances Act, Police Station Malhipur, District Shrawasti, 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 manner in which the arrest of the applicant and recovery is shown, could not be believed by any prudent person moreover no serious effort has been made by police party to procure independent public witness while admittedly they were present at the spot. 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 principle of law.
6. It is further submitted that sample has been collected at the spot while the same was required to be taken, before sending it to the forensic lab, before a magistrate and Section 52(A) of the N.D.P.S. Act has been violated without there being any excuse.

7. 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 820 grams of 'charas' is shown to have been recovered from the possession of the applicant, which is much below the commercial quantity i.e. 1kg 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.

8. It is further submitted that the applicant is in jail in this case since 15.10.2023 and charge sheet in this case has not been filed. While apart from another case with regard to minor criminal offence, there is no other criminal history of the applicant and in that case pertaining to Case Crime No.393 of 2023, under Sections 323, 504, 506 I.P.C., the applicant has been granted bail 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. It is undertaken that the applicant shall cooperate in the investigation and would remain present before the investigating officer as well as before the trial court as and when his presence would be required.

9. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that 820 grams of charas has been recovered from the possession of the applicant and having regard to the quantity of charas recovered from the applicant, he is not entitled to be released on bail.

10. Having heard learned counsel for the parties and having perused the record, it is evident that only 820 grams of 'charas' is shown to have been recovered from the possession of the applicant. Commercial quantity of 'charas' is more than 1kg, thus the 'charas' allegedly recovered from the applicant 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. The applicant is having criminal history of one case, however, the same is pertaining to minor penal offence and in which he has been granted bail by competent criminal court. Applicant is in jail in this case since 15.10.2023. Investigation of this case is still pending and the apprehension of the prosecution may be taken care of by placing certain conditions with regard to the presence of the applicant before the trial court as well as before

the investigating officer.

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 applicant has made out a case for bail. The bail application is thus **allowed**.

12. Let the accused/applicant- **Mobin Nadak @ Loha** 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) Since it is shown that the investigation of the case is still pending, applicant shall cooperate in the investigation and shall also appear before the investigating officer as and when his presence would be required and in this regard shall submit a written information to the investigating officer of this case/S.H.O. of the concerned police station of intimating his mobile phone number.

(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.

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 applicant 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 on the merits of the case.

Order Date :- 5.12.2023

Anupam S/-