Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14281 of 2023

Applicant :- Mohd. Arshad
Opposite Party :- State Of U.P Thru. Prin. Secy. Home Civil Secrt. Lko.
Counsel for Applicant :- Rani Vijay Laxmi Singh
Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Heard learned counsel for the applicant, Sri Mohd. Asif Khan, learned A.G.A. for the State and perused record.

2. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.1056 of 2023 under Section 8/21 of N.D. P. S. Act, PS Kotwali Nagar, district Barabanki.

3. Learned counsel for the applicant has submitted that 116 grams of smack is alleged to have been recovered from the possession of the applicant which is below commercial quantity. She has submitted that there is violation of Section 50 of NDPS Act because search and seizure procedure was not conducted before the gazetted officer and there is no eyewitness. She has further submitted that due to enmity, the police has falsely implicated the applicant in the present case and the applicant has not committed the offence.

4. Learned counsel for the applicant has relied upon the judgment of Hon'ble Supreme Court in the case of **Vijaysinh Chandubha Jadeja. Vs. State of Gujarat: Crl. Appeal No.943 of 2005, decided on 29.10.2010 (para-22)** and **State of Punjab. Vs. Baldev Singh: (1999) 6 SCC 172 (para-24)**.

5. She has explained the criminal history of the applicant in para-16 of the bail application satisfactorily. She has further submitted that the applicant is in Jail since 27.9.2023.

6. Learned A.G.A. has opposed the prayer for bail but could not dispute the fact that the recovered substance from the applicant is below commercial quantity and there is violation of Section 50 of NDPS Act.

7. Considering over all facts and circumstances of the case, the

argument that the recovered contraband substance is below commercial quantity and there is violation of Section 50 of NDPS Act,, it is a fit case for bail.

8. Let the applicant, Mohd. Arshad be released on bail in the above case crime number on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of Court concerned with the following conditions :-

(i) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(ii) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the court on the date fixed in such proclamation, then the trial court shall initiate proceedings against him in accordance with law, under Section 174-A of the Indian Penal Code.

(iv) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

9. It is made clear that the observations made in this order are limited to the purpose of determination of this bail application and will in no way be construed as an expression on the merits of the case. The Trial Court shall be absolutely free to arrive at its independent conclusions on the basis of evidence led unaffected by anything in this order.

Order Date :- 7.12.2023
Rajneesh JR-PS)

Digitally signed by :-
RAJNEESH KUMAR
High Court of Judicature at Allahabad,
Lucknow Bench