

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14329 of 2023

Applicant :- Saurabh Rawat

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

Counsel for Applicant :- O.P. Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.
2. This bail application has been moved by the accused/applicant- **Saurabh Rawat** for grant of bail, in Case Crime No. 446 of 2023, under Sections 8/20 of the Narcotic Drugs & Psychotropic Substances Act, Police Station Purwa, District Unnao, during trial.
3. 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.
4. 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 principle of law. It is further submitted that sample has not been taken as required by the provisions as contained under Section 52(A) of the N.D.P.S. Act as well as the guidelines issued by the Department of Revenue in the year 1989.
5. 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 1.50 kg of 'ganja' is shown to have been recovered from the possession of the applicant, which is much below the commercial quantity i.e. 20 kg 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.

6. Learned counsel for the applicant while drawing attention of this Court towards the Section 2(iii)(b) of the N.D.P.S. Act submits that 'ganja' has been defined as the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops) and there is no description in the arrest memo/recovery memo to show as to whether the whole stuff allegedly recovered from the possession of the applicant could be termed as 'Ganja' punishable under the N.D.P.S. Act.

7. It is further submitted that the applicant is in jail in this case since 28.9.2023 and criminal history of two cases has been explained in para no. 15 of the bail application. The bail orders with regard to these two cases have been placed as Annexure-2 of the bail application. Charge-sheet in this case has already been submitted 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.

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

9. Having heard learned counsel for the parties and having perused the record, it appears that the applicant was apprehended with one kilogram and 500 grams of 'ganja', however, there is no description of the stuff recovered from the applicant as to whether, the whole plant or leave or fruits of the plant cannabis has been recovered from the applicant. The definition of the ganja as enumerated under Section 2(iii)(b) of the N.D.P.S. Act which provides possession of the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops) is punishable. It is vehemently submitted by learned counsel for the applicant that even if the case of the prosecution is taken on its face, it could not be presumed that the whole stuff recovered from the applicant is 'Ganja' as defined under Section 2(iii)(b) of the N.D.P.S. Act. It is further submitted that the quantity of 1.5 kilograms 'ganja' allegedly recovered from the applicant is much below the commercial quantity i.e. 20 kilograms. Charge-sheet in this case has already been filed. Applicant is in jail in this case since 28.9.2023 and criminal history of the applicant has been adequately explained. This Court is also of the considered view that criminal history of the accused persons is

relevant only keeping in view the material/evidence available against the applicant.

10. 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**.

11. Let the accused/applicant- **Saurabh Rawat** 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.

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

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

14. 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 :- 6.12.2023

Shravan