

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14552 of 2023

Applicant :- Mohd. Gufran

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Deptt. Home Govt. Civil Sectt. Lko

Counsel for Applicant :- Manoj Kumar, Anil Kumar Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh, J.

1. Supplementary affidavit filed on behalf of the applicant is taken on record.
2. Heard learned counsel for the applicant and Sri G.D. Bhutt, learned A.G.A.-I for the State.
3. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No. 323 of 2023 under section 8/21 of Narcotic Drugs and Psychotropic Substances Act, 1985, Police Station Masauli District Barabanki.
4. It has been submitted by learned counsel for the applicant that 106 grams of smack is alleged to have been recovered from the possession of the applicant which is below the commercial quantity. He has further submitted that there is complete violation of mandatory provision of section 50 of the NDPS Act because search and seizure procedure has not been adopted before the Gazetted Officer. Learned counsel for the applicant has submitted that there is no independent eye witness of search and seizure and false recovery of contraband substance has been made. He has submitted that there are criminal history of six case of the applicant and he has explained the criminal history of four cases in para-13 of the affidavit filed in support of the bail application and the criminal history of two cases have been explained in 3 of the supplementary affidavit dated 20.12.2023 satisfactorily. He has submitted that there is no previous case of NDPS Act and the applicant is in jail 27.10.2023.
5. Learned A.G.A. has opposed the prayer for bail but could not dispute the aforesaid facts.

6. Without expressing any opinion on the merits of the case and after hearing learned counsel for the parties and looking into overall facts and circumstances of the case as well as the argument that the commercial contraband substance is below commercial quantity and no case of NDPS Act is pending against the applicant and the argument that there is complete violation of mandatory provision of section 50 of the NDPS Act, therefore, I am of the opinion that the applicant is entitled to be released on bail.

7. Let the applicant, namely, **Mohd. Gufran**, 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.

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 :- 20.12.2023

dk/