

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14799 of 2023

Applicant :- Pankaj Sonkar

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

Counsel for Applicant :- Vijay Pratap Singh, Karunesh Singh

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh, J.

1. Heard Shri Vijay Pratap Singh, learned counsel for the applicant, Shri MVS Chauhan, learned AGA for the State and perused the record.

2. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.446 of 2023, under Sections 27 (a)/29 NDPS Act, Police Station Gomti Nagar, District Lucknow.

3. It is contended by learned counsel for the applicant that co-accused Swastika has been enlarged on bail by coordinate Bench of this Court in Criminal Misc. Bail Application No.11136 of 2023 vide order dated 18.11.2023. Learned counsel submitted that FIR indicates that role of the applicant is also similar to the role of co-accused Swastika because the applicant and co-accused are involved in purchase of necessary items for the party and they were identified as Swastika and Pankaj. It has been informed that they were residing in Room No.103 with other companions to celebrate party on 16.7.2023. This allegation has been made to the extent that role of the applicant is almost identical to the co-accused who has been granted bail by this Court. The relevant portion of order of co-accused is quoted below :-

"3. Learned counsel for the accused-applicant while pressing the bail application submits that the accused-applicant has falsely been implicated in this case. She is a lady and has not committed any offence.

4. It is further submitted that the prosecution story as narrated in the First Information Report is to the tune that on 16.7.2023 a video became viral on social media platform wherein some boys and girls were shown counting big amount of currency notes with a bottle of wine and Hookah and in this regard the police party had deputed informers to know the truth of that viral video and when the police party was present near Ambedkar Park crossing, the police informer informed that a girl and two boys shown in the viral video are residing in SBG Guest Inn Hotel and they are indulged in the contraband trade. On this information the police party arrived at SBG Guest Inn Hotel and intercepted one boy shown in the video who told his name as 'Tarun' and on inquiry he informed that he is residing in the hotel with his friend Pankaj in Room No. 103 and they were intending to celebrate party for which their other companions 'Pankaj' and 'Swastika' (applicant) had gone along with driver Ajmal to purchase necessary items for the party and at that time a girl arrived with a boy to whom the Tarun identified as Swastika and Pankaj and they informed that they are residing in Room No. 103 and had invited their other friends to celebrate a party and on 16.7.2023 also they had launched a party in Room No. 104 of the same Hotel.

5. It is also the case of prosecution that co-accused Arun informed that he is a supplier of contraband/ drugs through mobile app in various countries and he

collected the money after selling the same and it was the same money which was shown in the viral video with his brother Lucky and when they came to know that the police is inquiring about the same co-accused Arun asked them to take Rs. 7,00,000/- with them and remain away for some time and hence they were residing at various hotel by concealing their identity. On the pointing of these accused persons Rs. 6,57,000/- was recovered from a vehicle which was parked outside the hotel.

6. Highlighting the above facts, it is vehemently submitted that no contraband etc. has been recovered from the possession of the applicant and Rs. 6,57,000/- has been recovered from the vehicle which was parked outside the hotel and the applicant was not having any connection with the same and Rs. 6,57,000/- recovered from the vehicle is also not connected with the applicant.

7. It is further submitted that in fact on 16.7.2023 the applicant was in a hotel with her friends where they were enjoying a party and had filmed a video and on 22.7.2023 the applicant was called by the police and arrested. However her arrest has been shown in a wrong way by the police i.e. from outside the hotel.

8. It is also submitted that even if the case of the prosecution is taken on its face, it will emerge that the applicant was celebrating with her friends and even if the confessional statement of the accused persons are taken on their face there is no role of the applicant pertaining to involvement in the contraband trade and apart from the confessional statement of the accused persons and the applicant which could not be proved against her by virtue of bar contained under Section 26 of the Indian Evidence Act, there is no iota of evidence against him.

9. It is also submitted that the applicant is in jail in this case since 23.7.2023 and she is not having any criminal history and there is absolutely no evidence available against the applicant and the money which has been recovered from the vehicle may also not be connected with the applicant as neither the vehicle was owned by her nor the money recovered belongs to her. She is a lady and there is no apprehension that the accused-applicant after release on bail, may flee from the process of law or may otherwise misuse the liberty.

10. Learned counsel for the applicant has relied on the law laid down by the Hon'ble Supreme Court in State of West Bengal VS. Rakesh Singh @ Rakesh Kumar Singh reported in 2022 SCC OnLine SC 828 and Tofan Singh Vs. State of Tamil Nadu reported in MANU/SC/0797/2020.

11. Learned A.G.A. on the other hand submits that the matter pertains to Sections 27(a)/29 of the N.D.P.S. Act and with regard to these penal offences the twin conditions enumerated in Section 37 1(b) of the N.D.P.S. Act would attract. It is vehemently submitted that a viral video was investigated by the police and the applicant and other co-accused persons were apprehended and they confessed to have been indulged in the illegal contraband business and on their pointing Rs.6,57,000/- has also been recovered.

12. Having heard learned counsel for the parties the prosecution story appears to be that on the basis of a viral video wherein some boys and girls are seen counting currency notes and a bottle of liquor and 'Huqqa' is also shown placed beside them, the matter was inquired and on a tip off given by a police informer one Tarun was intercepted in a hotel and he told that a room was booked in that hotel by his associate Pankaj and he (Pankaj) and applicant had gone to buy some stuff from the market with driver Ajmal. Applicant and one Pankaj Sonkar also stated to have arrived there and they also confessed that they are residents of Lucknow and have come to make a party in the room of the hotel which was booked by co-accused Pankaj and they have also invited their other friends. Regarding viral video they all confessed that on 16.7.2023 room no.104 was booked by one Arun and Luccky and they were also invited to celebrate a party and when they were counting currency notes brought by Arun and Luccky the said video was filmed and was also made viral by co-accused Arun. Co-accused Arun has also confessed that he is indulged in illegal contraband trade and used to supply narcotics in foreign countries through online application and the money earned by selling the same is brought in India through other persons. Tarun also told that Aryan was telling him that he is having 'Ganja' with him and if any body is in need of the same he will arrange.

13. It is also confessed that when the police was inquiring about the viral video, co-accused Aryan had given them Rs. 7,00,000/- and a mobile phone with the instructions to hide somewhere and it is in pursuance of the same they were

residing there. Rs. 6,57,000/- were recovered from a vehicle parked outside the hotel, wherein the Driver Ajmal was found sitting. A mobile phone is also shown recovered from the applicant. Tarun and Pankaj also confessed that they are also indulged in illegal trade of narcotics with Aryan.

14. The allegations which have been levelled against the applicant is only of partying with other co-accused persons. No allegation of indulging in narcotic trade has been levelled against her by any of the co-accused in his confessional statement. Other accused persons also appears to have confessed that they will get the 'Gaja' recovered, however, from the room of the hotel or from anywhere no narcotic or any other illegal article is shown to have been recovered. The role of indulging in illegal narcotic trade has been attributed to co-accused Aryan, Arun, Luccy and Ansh in association with Tarun and Pankaj. The accused persons are shown to have talked frequently with each other on their mobile phones. There is nothing in the counter affidavit filed by the State which may suggest that any online application has been found in the mobile phone of the applicant, whereby the online drugs supply may be made, nor any co-accused has confessed to this effect and her role has been confined only of partying with other co-accused persons. The charge sheet in this case has also been submitted. The role of instant applicant appears to be distinguishable from the role of other co-accused persons. She is also not having any criminal history and having regard to all the facts and circumstances mentioned above the satisfaction as required under Section 38 (1) (b) of N.D.P.S. Act stands satisfied, so far as applicant is concerned.

15. In result bail application of the applicant is hereby allowed."

4. Learned counsel submitted that role of the applicant is identical to the co-accused Swastika and she has been granted bail. The only fact which is not identical is that she is lady otherwise the applicant and co-accused have been arrested on the spot. The applicant has no criminal history. The applicant is in jail since 23.07.2023.

5. Learned AGA opposed the prayer for bail but could not dispute the fact that role of the applicant is similar to the co-accused who has been granted bail.

6. Without expressing any opinion on the merits of the case, after hearing learned counsel for the parties and looking to the fact that case of the applicant is identical to co-accused; argument that applicant has no criminal history and is languishing in jail for five months, I am of the opinion that the applicant is entitled to be released on bail.

7. Let the applicant, **Pankaj Sonkar**, 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.

8. 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 :- 15.12.2023

Pks