

Court No. - 15

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 1143 of 2024

Applicant :- Surjeet Singh

Opposite Party :- State Of U.P. Thru. Zonal Director , N.C.B Lko.

Counsel for Applicant :- Anil Kumar Pandey

Counsel for Opposite Party :- Akhilesh Kumar Awasthi

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard Shri Anil Kumar Pandey, learned counsel for the accused/applicant as well as Shri Akhilesh Kumar Awasthi, learned counsel for N.C.B. and perused the record.

2. This bail application has been moved by the accused/applicant- **Surjeet Singh** for grant of bail, in Case Crime No. 746/2023, under Section 409, 368 IPC, Police Station Laharpur, District Sitapur, during trial.

3. Learned counsel for the accused-applicant while pressing the bail application submits that the applicant has falsely been implicated in this case and he has not committed any offence as claimed by the prosecution.

4. It is further submitted that as per the admission of the prosecution the arrival of the applicant with narcotics was in the knowledge of the officers / officials of NCB, however, the information which has been provided to them has not been reduced into writing as provided under Section 42 of the N.D.P.S. Act.

5. It is further submitted that Section 50 of the N.D.P.S. has not been complied in letter and spirit as apart from the search of the truck which was allegedly being driven by the applicant, his person is also shown to have been searched, however, no explanation has been given by the N.C.B. Officials as to why the applicant was not taken before the Magistrate or any independent Gazetted Officer, moreover the signature of Additional Superintendent of Police Mr. Shiv Raj, before whom the applicant is stated to have been searched is not available on the recovery or arrest memo which suggests that the search of the applicant has not been taken even before Shri Shiv Raj, the Additional Superintendent of Police and thus, Section 50 of the N.D.P.S. Act has been violated.

6. It is further submitted with considerable force that the provision as contained under Section 52-A of the N.D.P.S. Act has also not been complied and the photographs of the alleged articles and drawing of sample as well as certification by Magistrate regarding drawing of such samples is not emerging from the record.

7. It is further submitted that there is no independent eye witness of alleged recovery or arrest and the witness which has been shown in the recovery memo is the constable posted in the Police Station and thus no efforts have been made to arrange any public witness.

8. It is further submitted that the sample has not been drawn on spot in compliance of the Notification No. 1/88 and 1/89 issue by the Department of Revenue, Central Government of India.

9. It is further submitted that even if the case of the prosecution is taken on its face it will emerge that the applicant was not in the conscious knowledge/possession of the contraband as he was a driver of the alleged truck and thus was only a servant /employee of the owner.

10. It is further submitted that in absence of any link evidence pertaining to the safe custody of the contraband the story as cooked up by the prosecution may not be believed. The applicant is in jail in this case since 2.3.2023.

11. It is further submitted that after giving 3rd degree treatment to the applicant a false and fabricated statement has been manufactured and keeping in view the Law laid down by the Hon'ble Supreme Court in Tofoan Singh Vs. State of Tamil Nadu, AIR 2020 SC 5592 the same may not be proved against the applicant and even if the case of the prosecution is taken on its face it will emerge that main accused of the alleged crime was co-accused Yadvinder Singh and the applicant was only a carrier and Yadvinder Singh has already been released on bail by this Court, vide order dated 29.11.2023 passed in Criminal Misc. Bail Application No. 9284 of 2023.

12. It is further submitted that the applicant is not having any criminal antecedent 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 and till now only one prosecution has been presented by the N.C.B. and having regard to the pace with which trial is going before the trial court, the same is not expected to conclude in near future.

13. Learned counsel for the applicant has relied on the

following law reports:-

(i) **Ram Singh Vs. Central Bureau of Narcotics** reported in (2011)3 Supreme Court Cases (Cri) 181 & (2011)11 Supreme Court Cases 347.

(ii) Criminal Appeal No. 3191 of 2023 (arising out of SLP (Crl.) No. 3010 of 2023) **Yusuf @ Asif Vs. State**, decided on October 13, 2023.

(iii) Criminal Appeal No. 1651 of 2023, **Mangilal Vs. The State of Madhya Pradesh**, decided on July,12, 2023.

(iv) **Union of India vs. Mohanlal and another**, reported in [2016 (93) ACC 546]

(v) Notification dated 23 December, 2022 in Exercise of Powers conferred by Section 76 read with Section 52-A of N.D.P.S. Act, 1985.

(vi) **Javed Gulam Nabi Shaikh Vs. State of Maharashtra and another** in Crl. Appeal No. 2787 of 2024, decided on 3 July, 2024.

(vii) **Rabi Praksh Vs. State** in Special Leave to Appeal (Crl.) No. 4169 of 2023.

(viii) **Ankit Singh @ Gaurav Singh Vs. State of U.P.** in Crl. Misc. Bail Application No. 8878 of 2023, decided on 27.4.2024.

(ix) **Yadvinder Singh Vs. Union of India** in Crl. Misc. Bail Application No. 9284 of 2023, decided on 29.11.2023.

14. In addition to the oral submission made by learned counsel for the applicant, he has also filed written arguments which has also been taken on record.

15. Shri A.K. Awasthi, learned counsel for N.C.B. while relying on the counter affidavit filed by the N.C.B. vehemently opposes the prayer of bail of the applicant on the ground that after receiving discrete information with regard to the transportation of the contraband by the applicant in a truck bearing registration No. P.B. 05 A.L. 5367 the said information was presented in writing to Mr. Sunil Dubey, Assistant Director, N.C.B., Lucknow and a team was constituted. The team so constituted has coordinated with Police Station Kauria and the truck was intercepted in presence of two independent witnesses and the applicant was requested to identify himself who stated his name as Surjeet Singh (applicant) and accepted that under the driver

seat of the truck opium has been kept and on his disclosure 4 packets containing opium were recovered from below the driver's seat and the substance of one of the packet was tested by testing kit which confirmed to be the 'opium' and in total 4 Kilogram illegal opium was recovered.

16. It is further submitted that the sample was taken from the recovered opium by the Investigating Officer before the Presiding Officer of the Special Court as per law laid down of the Hon'ble Supreme Court in Mohan Lal's case and there is no violation of Section 52-A of the N.D.P.S. Act.

17. It is further submitted that opium has been recovered from conscious possession of the applicant and as the recovery has been made in dying hours of the night it was impossible to procure independent witnesses and in this regard Dharmendra Thakur and Rishikesh Yadav who were constable of U.P. Police were requested to be the independent witnesses of the arrest and recovery.

18. It is further submitted that the applicant was transporting and found in possession of 4 K.G. of opium which is more than the minimum commercial quantity and keeping in view the provisions as contained under Section 37 (i) (b) of the N.D.P.S. Act the applicant is not entitled for bail.

19. Learned counsel for N.C.B. in support of his submissions has relied on following case laws:-

(i) ***Madan Lal and another Vs. State of H.P.*** reported in 2003 Cri. L.J., 3868.

(ii) ***Baldev Singh Vs. State of Haryana*** reported in 2015 (17) SCC, 554.

(iii) ***Rajan Kumar Chaddha Vs. State of Himachal Pradesh*** reported in AIR 2023 Supreme Court, 5164.

(iv) ***State of Punjab Vs. Baljinder Singh*** reported in 2020 Cri. L.J., 751.

(v) ***Union of India Vs. Mohan Lal and another*** reported in 2016 SCC Online SC, 88.

(vi) ***Dehal Singh Vs. State of H.P.*** reported in 2010 AIR SCW 5533.

(vii) ***Narcotics Control Bureau Vs. Mohit Aggarwal*** reported in 2022 SCC Online SC 891.

(viii) ***Union of India Vs. Rattan Malik @ Habul*** reported in 2009 SCC Online SC 173.

(ix) Notification G.S.R. 899 (E) Dated 23.12.2022.

20. Having heard learned counsel for the parties and having perused the record, it is revealed that on 1.3.2023 at 14.30 hours a discrete information was received by the Junior Intelligence Officer of NCB with regard to the transportation of opium which was reduced into writing and a team was accordingly constituted and about 10.40 P.M. on the same day a truck bearing Registration No. P.B. 05 AL 5637 was intercepted and applicant/ driver namely, Surjit Singh was found driving the truck and on the information provided by him from the back of the driver seat 4 packets of opium were recovered containing total of 4 K.G of opium. The statement of applicant was recorded under Section 67 of the N.D.P.S. Act wherein he stated that he was instructed by the co-accused Yadvinder Singh who was the owner of the truck to receive this opium from one Karu Shaw and that the Karu Shaw had given him this opium on 28.2.2023 at Champaran Jharkhand. The statement of the co-accused Yadvinder Singh owner of the truck is also shown to have been recorded under Section 67 of the N.D.P.S. Act wherein he also stated to have admitted that he had purchased this opium @ 1,00,000/- per K.G. from one Karu Shaw and had given him Rs. 80,000/- in advance by transferring it through UPI on 19.2.2023 and 26.2.2023 and the rest of the money was agreed to be paid on delivery of the opium. The Bank account details of the co-accused Yadvinder Singh was also collected by the N.C.B which shows that Rs.40,000/- each was transferred through U.P.I. to Karu Shaw by the applicant on two occasions. Co-accused Yadvinder Singh had admitted the transfer of this money to Karu Shaw on the pretext that he is a transporter and owns many trucks and had also taken some trucks on lease and as the money is usually required to be given to the drivers for purchase of diesel and other expenses and sometimes the drivers also borrow money from the other drivers or the Dhaba owners situated on route and since the tyres of the truck were damaged, the money which has been transferred by the co-accused Yadvinder Singh to the bank account of Karu Shaw was taken by applicant for replacement of the tyres of truck.

21. The N.C.B. however appears to have collected evidence to show that the money was sent by co-accused Yadvinder Singh to Karu Shaw as payment of opium. Thus the case of the NCB is that opium was in fact purchased by the co-accused Yadvinder Singh, who had transferred the money to Karu Shaw and the applicant before this Court was only a receiver of the same and the truck which was being driven by the applicant

is also owned by co-accused Yaduvinder Singh. Yaduvinder Singh has already been released on bail by this Court.

22. Various submissions have been raised in order to show that Section 52 A of N.D.P.S. Act and guideline 1/88 and 1/89 have not been followed and only on this score the applicant is entitled for bail. I, do not want to discuss this point in depth as any finding or discussion on this legal point may influence the decision of the trial court. Admittedly the applicant is not having any previous criminal antecedents and the opium was purchased by co-accused Yadvinder Singh and money was also paid by him to Karu Shaw through UPI and the truck from which opium is shown to have been recovered is also owned by co-accused Yadvinder Singh and he had also directed applicant to take the opium from one Karu Shaw. Complaint is shown to have been filed. The role of applicant appears to be only of a carrier as he was driver on the truck owned by co-accused Yadvinder Singh who had purchased the opium from Karu Shaw and in considered opinion of this Court is on better footing than co-accused Yadvinder Singh who according to the own case of NCB was real purchaser of the opium.

23. Thus, having regard to all the facts and circumstances mentioned herein before and also keeping an eye on the quantity of opium recovered from the truck owned by co-accused Yadvinder Singh and that he was the actual purchaser of opium and he has been released on bail and also keeping in view the period of detention of applicant, the twin conditions mentioned under Section 37(1) (b) of N.D.P.S. Act stands satisfied, moreso when applicant is in jail in this case since 25.11.2023 and is not having any criminal history. Complaint in this case appears to have already been filed 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.

24. In the result bail application moved by the applicant is allowed.

25. Let the applicant- Surjeet Singh involved in the aforesaid case be released on bail on furnishing a personal bond with two heavy 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.

(iv). 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;

(v). In case, the applicant misuses the liberty of bail 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; and

(vi) 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 default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of his bail and proceed against him in accordance with law.

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

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

28. Observations made herein-above are only for the purpose of disposal of bail application and the same shall not have any bearing on the trial of the case.

Order Date :- 3.9.2024

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