

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 7283 of 2023

Applicant :- Beer Vijay Vikram Singh

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

Counsel for Applicant :- Suresh Chandra Srivastava, Ayodhya Prasad Mishra A.P. Mishra, Nagarjun Pandey, Rituraj Mishra, Shesh Ram Verma, Vaibhav Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Karunesh Singh Pawar, J.

1. Heard Sri A.P. Mishra, learned counsel for the applicant as well as Sri Alok Tewari, learned A.G.A. for the State-respondents.

2. Learned counsel for the applicant submits that on a secret information being received by the police while on patrolling duty, the car of the co-accused was apprehended. The accused was personally searched and from his personal search a mobile and Rs.500/- were recovered. After opening the diggi of the car, two plastic bags were found. Upon asking the accused persons, they unanimously said that there is ganja in it. They were personally searched while complying Section 50 of the N.D.P.S. Act and consent was sought. All the accused persons unanimously said that they want to be searched before the competent officer. Consequently, consent letter was got prepared and Naib Tehsildar, Tanda Pradeep Kumar Singh was called upon. In front of him, the search was again conducted and from the bags 40.500 kg ganja was recovered. It is further alleged that with the consent of all the three accused persons, the copy of the recovery memo was given to one accused Ashutosh who tore it apart.

Learned counsel for the applicant firstly submits that search of the accused persons have to be done in one go, search cannot be done in piecemeal. Secondly, if the person of the applicant was searched and the diggi of the car was also searched, then Section 50 of the N.D.P.S. Act apply. Thirdly, he submits that car of the co-accused was private conveyance and there was prior information to the police party and therefore, Section 42 N.D.P.S. Act will apply and Section 43 will not apply.

He further submits that copy of the recovery memo could not have been given to one accused out of three and it could not have been mentioned in the body of the recovery memo that the accused Ashutosh Singh, the co-accused, tore it and thus,

Section 100 sub-section (7) Cr.P.C. has been violated.

3. In support of his contention, learned counsel for the applicant has relied on the judgment of "**Karnail Singh Vs. State of Haryana, (2009) 8 SCC 539**". Emphasis is on para 35 (b)(c) and (d). It is contended that even if the police party receives information during patrolling duty and it is not practical in reducing such information in writing, then in such circumstance, as soon as it is practical, the police party could record the information in writing and forthwith inform the same to the superior officer. He submits that total non-compliance of sub section 1 and 2 of Section 42 of NDPS Act has been held impermissible.

4. In "**State of Rajasthan Vs. Jag Raj Singh @ Hansa, AIR 2016 SC 3041**", the Supreme Court while relying on the the judgment of **Karnail Singh (supra)**, it has been asserted that in special circumstances also compliance of Section 42(1)(2) of NDPS Act is mandatory.

In the present case Vehicle used in the crime in question is a private vehicle Tigor car which is not registered as commercial vehicle, hence, compliance of Section 42(1)(2) of NDPS Act is mandatory. Emphasis is on para 15 and 17.

It has been next submitted that search and seizure have been affected on the prior information provided by the informant at 5:00 am in the morning on 06.04.2023 during sunset and sunrise about transportation of illegal narcotics drug, hence, according to the principal laid down in para 18 and 19 of the said judgment, the compliance of Section 42(1)(2) of NDPS Act is mandatory.

5. The judgment of Jag Raj Singh @ Hansa (supra) has been followed in the case of "**Boota Singh and another Vs. State of Haryana, 2021 SCC Online SC 324**". Emphasis is on para 12.

It is submitted that when nothing was found, the SDM, Tanda was reported and after that Naib Tehsildar Tanda Pradeep Kumar came on the spot and in his presence, the car was searched which is not permissible. Since the personal search of the applicant was initially taken, therefore, personal search of the applicant could not have been affected in absence of gazetted officer or the magistrate which has been done in this case.

6. In support of his submission, he has also placed reliance on the judgment of Supreme Court passed in the case of "**Dilip Vs. State of MP, (2007) 1 SCC 450**". Emphasis is on para 16. The

judgment of Dilip (supra) has been followed in the case of "**State of Rajasthan Vs. Parmanand, (2014) 5 SCC 345**". Emphasis is on para 16. He has further relied on the judgment of the **S.K.Raju @ Abdul Haque @ Jagga Vs. State of West Bengal**. Emphasis is on para 22.

7. Learned counsel for the applicant submits that there is no public witness of the search and seizure. Next submission is that there is total non-compliance of Section 100 IPC. It is alleged that copy of the recovery memo given to one accused Ashutosh Singh, however, he tore and threw it, such explanation has been held to be not acceptable in the case of "**Sewa Ram Vs. State of U.P., 1992 ACC 29 586, 1992 CRI. L.J. 2929**".

It is further submitted that the applicant is languishing in jail since 06.04.2023. There is no possibility of the applicant of fleeing away after being released from jail or tampering with the witnesses. In case the applicant is enlarged on bail, he shall not misuse the liberty of bail.

8. Learned AGA has opposed the bail application submitting that it is not a case of false implication. Huge recovery of Ganja has been affected from the search of the Tigor car.

9. On due consideration to the judgments referred herein above, prima facie there appears to be non-compliance of provisions of section 42 and Section 50 of NDPS Act, coupled with non-compliance of Section 107 IPC, the accused-applicant may not be held guilty during trial and considering the fact that the applicant has no prior criminal antecedent and nothing was recovered from his personal search, the twin conditions of Section 37(2) NDPS Act appears to have been satisfied and without expressing any opinion on the merits of the case, I find it to be a fit case for enlarging the applicant on bail.

10. Accordingly, the bail application is allowed.

11. Let the applicant, **Beer Vijay Vikram Singh**, involved in Case Crime/FIR No. 69/2023, under Sections 8/20 NDPS Act, Police Station - Kotwali Tanda, District - Ambedkar Nagar, be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice:-

(i) The applicant will not tamper with the evidence during the trial.

(ii) The applicant will not pressurize/ intimidate the prosecution witness.

(iii) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

(iv) 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.

(v) 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.

(vi) 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.

Order Date :- 17.1.2024
R.C.