

Court No. - 13

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11684 of 2022

Applicant :- Rizwan

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

Counsel for Applicant :- Vishwa Nath Singh, Dinesh Kumar Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Shamim Ahmed, J.

Heard learned counsel for the appellant and Shri Vinod Kumar Yadav, learned counsel appearing for the State.

The appellant/applicant, Rizwan seeks bail in Case Crime No. 0187 of 2022, under Section 8/20, N.D.P.S. Act, Police Station Dargah Sharif, District- Bahraich.

Learned counsel for the appellant/applicant submits that the appellant is innocent and has been falsely implicated in the present case. He further states that actually the applicant was standing in front of some shop for purchase near the Chauraha and the Police personnel arrested him without any cause and thereafter a false recovery of 1.60 Kg. Charas has been shown from. He also submits that alongwith the applicant two other persons were arrested, but against none of them allegation of carrying Charas was levelled. Learned counsel for the applicant further submits that the commercial quantify of Charas is 1 Kg., but only to give gravity to the offence the prosecution has weighted the Charas as 1.60 Kg., which also is just slight above to the commercial quantity, and the measurement was taken alongwith the bag, which is said to have carrying the said Charas, thus, the weight was not properly done and the applicant was falsely implicated. The learned counsel further submits that the entire allegation in the F.I.R. are false.

He further submits that the appellant is in detention since 24.06.2022 and has already undergone a substantial period of detention and that in the wake of heavy pendency of cases in the Court, there is no likelihood of any early conclusion of trial. In support of his contention, learned counsel for the appellant has placed reliance of Hon'ble Apex Court judgment in the case of **Kamal Vs. State of Haryana, 2004 (13) SCC 526** and submitted that the Hon'ble Apex Court was pleased to observe in paragraph no. 2 of the judgment as under :-

"2. This is a case in which the appellant has been convicted u/s 304-B of the India Penal Code and sentenced to imprisonment for 7 years. It appears that so far the appellant has undergone imprisonment for about 2

years and four months. The High Court declined to grant bail pending disposal of the appeal before it. We are of the view that the bail should have been granted by the High Court, especially having regard to the fact that the appellant has already served a substantial period of the sentence. In the circumstances, we direct that the bail be granted to the appellant on conditions as may be imposed by the District and Sessions Judge, Faridabad."

Thus, he submits that the ratio of law as applicable by the Hon'ble Apex Court is also applicable in the present case, as due to heavy pendency of criminal cases pending before the trial court there are blinking chances that in near future the trial will proceed expeditiously.

Regarding the criminal history, counsel for the applicant submits that it has been explained in para-2 of the supplementary affidavit filed by the applicant, which is on record. He further submits that the applicant was falsely implicated in all these cases.

With these submissions, the learned counsel for the applicant submits that the applicant be released on bail.

Sri Vinod Kumar Yadav, learned A.G.A. opposed the prayer for bail. He submits that the applicant is habitual of committing the same crime and three cases of similar nature are already registered against him, thus, he is not entitled to any sympathy by this court, even though the quantity of Charas recovered from the possession of the applicant is slight above the commercial quantity, but he did not dispute this fact that alongwith the applicant two other persons were also arrested on the spot, but they were not charged in the crime, thus, he submits that the bail application be dismissed.

After perusing the record in the light of the submissions made at the bar and after taking an overall view of all the facts and circumstances of this case, the nature of evidence, the period of detention already undergone, the unlikelihood of early conclusion of trial and also in the absence of any convincing material to indicate the possibility of tampering with the evidence and considering the fact that the persons apprehended alongwith the applicant were not charged and the quantity of Charas shown to have been recover is slight above the commercial quantity and has been weighed alongwith the bag containing the same, and further considering the larger mandate of the Article 21 of the Constitution of India and the law laid down by the Hon'ble Apex Court in the case of *Kamal Nath (supra)*, this Court is of the view that the applicant may be enlarged on bail.

The prayer for bail is granted. The application is **allowed**.

Let the applicant- **Rizwan S/o Basu** involved in Case Crime No. 572/23; Under Section: 354/504/506/436/427/376/511/452 I.P.C.; Police Station Ram Nagar, District: Barabanki, be released on bail on his executing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned on the following conditions :-

(1) The applicant will not make any attempt to tamper with the prosecution evidence in any manner whatsoever.

(2) The applicant will personally appear on each and every date fixed in the trial court and his personal presence shall not be exempted unless the court itself deems it fit to do so in the interest of justice.

(3) The applicant shall cooperate in the trial sincerely without seeking any adjournment.

(4) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

(5) In case, the applicant misuses the liberty of bail during trial, 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.

(6) The applicant shall remain present, 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.

(7) The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad or certified copy issued from the Registry of the High Court, Allahabad.

(8) The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

It may be observed that in the event of any breach of the

aforesaid conditions, the trial court shall be at liberty to proceed for the cancellation of applicant's bail.

It is clarified that the observations, if any, made in this order are strictly confined to the disposal of the bail application and must not be construed to have any reflection on the ultimate merits of the case.

(Shamim Ahmed, J.)

Order Date :- 14.6.2024

A.Nigam