Court No. - 15

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 9412 of 2024

Applicant :- Vivek Tiwari
Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Deptt. U.P. Lko.
Counsel for Applicant :- Adarsh Shukla,Rajiv Raman Srivastava
Counsel for Opposite Party :- G.A.

Hon'ble Shree Prakash Singh,J.

Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.

The instant bail application has been filed on behalf of the applicant with a prayer to release the applicant on bail during the trial in Case Crime No. 217 of 2024, under Section 8/20 of Narcotic Drugs and Psychotropic Substances Act, P.S. Kotwali Dehat, District Sitapur.

As per allegation in the F.I.R. contraband substance, i.e., 51.500 kg *ganja* is said to have been recovered from the possession of the applicant by the police.

It is contended by learned counsel for the applicant that the applicant is innocent and he has been falsely planted by the police. Contraband substance, i.e., 51.500 kg *ganja*, which is said to have been recovered from the possession of the applicant, is above the commercial quantity though there is no independent public eye witness of the recovery. He also submits that the contraband substance was sent for examination after ten days of its recovery, i.e., on 5.8.2024 as admittedly, the same was recovered on 25.7.2024, thus, whole proceeding vitiates in the eyes of law as per the notification no.1/88 of the Narcotic Department because the same says that the recovered contraband substance shall be sent within 72 hours.

In support of his submission, he has placed reliance on the Judgment passed by this Court in **Criminal Misc. Bail Application No.13590 of 2021 (Wahid Ali Vs. Narcotics Control Bureau, Lucknow) decided on 12.7.2023** and referred para 8 of the said Judgment. Para 8 of the said Judgment is quoted as under:-

"8. In support of the said arguments, he draws my attention to the statement of the co-accused who has stated that the drugs in question were kept at his residence and were transported through the vehicle and the driver had driven the vehicle. He thus argues that the applicant did not have any conscious possession of the alleged drugs and thus he cannot be tried for an offence under the N.D.P.S. Act. He next argues that the samples allegedly drawn from the offending seized drugs were not forwarded within a time span of 72 hours, which is a mandatory requirement in terms of the circular No.1/88. He further argues that even the point No.1.5 of the said circular requires that the sample should be drawn in the presence of the witness was not done. He further argues that the applicant has no criminal antecedent and thus, he satisfies the mandate of Section 37(b)(ii) of the N.D.P.S. Act. He lastly argues that the applicant has no criminal antecedents and is in custody since 13.07.2021 and the examination of the first witness out of seven witnesses proposed to be examined is going on and there is no likelihood of the trial being concluded in the near future and thus, he argues that pre-trial detention violates the rights of the applicant under Article 21 of the constitution of India. In support of his argument as recorded above, the counsel for the applicant has placed reliance on the judgments of Hon'ble Apex Court passed in Union of India vs. Shiv Shanker Kesari reported in (2207) 3 SCC (Cri) 505; Sk. Raju @ Abdul Haque @ Jagga vs. State of West Bengal reported in 2019 (106) ACC 303; State of Rajasthan vs. Parmanand reported in 2014 2 SCC (Cri) 563; Sanjeev and another vs. State of Himachal Pradesh reported in 2022 2 SCC (Cri) 522; Union of India vs. Bal Mukund and others reported in 2010 1 SCC (Cri) 54; Avtar Singh and others vs. State of Punjab reported in 2003 (1) JIC 134 (SC); Criminal Appeal No.523 of 2005 decided in the case of Ranjitsingh Brahmajeetsing Sharma vs. State of Maharashtra and Another and also the judgment of this Court in Criminal Misc. Bail Application No.42918 of 2021 decided in the case of Aditya Kumar vs. Union of India Through Narcotic Control Bureau, Lucknow."

Referring above said Judgment, he submits that the case of the present applicant is squarely covered with the Judgment of the aforesaid case. He further submits that there is no public eye witness of the alleged recovery and further there is no previous criminal history of the applicant, which has specifically been explained in para 17 of the bail application and the applicant is in jail since 25.7.2024 and in case, he is granted bail, he will not misuse the liberty of bail and would cooperate in the trial proceedings.

Per contra, learned A.G.A. opposed the prayer of bail and submits that applicant was involved in committing the aforesaid offence as contraband substance i.e., 51.500 kg *ganja* has been recovered from his possession and, as such, the applicant is not entitled to be released on bail.

Having heard the learned counsel for the parties and after perusal of record, it transpires that recovered contraband substance, i.e.. 51.500 kg *ganja* is above the commercial quantity; recovery of the contraband substance was done on

25.7.2024 while the same was sent for examination on 5.8.2024, i.e., after ten days of its recovery, which is in contravention of notification 1/88; there is no independent public eye witness of the alleged recovery; the criminal history of the applicant has been explained in para 17 of the bail application; and the applicant is languishing in jail since 25.7.2024.

Considering the submissions of learned counsel of both sides, nature of accusation and severity of punishment in case of conviction, nature of supporting evidence, prima facie satisfaction of the Court in support of the charge, reformative theory of punishment and considering larger mandate of the Article 21 of the Constitution of India and, without expressing any view on the merits of the case, I find it to be a case of bail.

Let the applicant **Vivek Tiwari** involved in the aforementioned crime 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:-

(1) The applicant shall not tamper with the prosecution evidence by intimidating/ pressurizing the witnesses, or otherwise during the investigation or trial;

(2) 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. He 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;

(3) 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.; and

(4) 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, the trial court shall initiate proceedings against him, in accordance with law under Section 174-A of the Indian Penal Code.

The identity, status and residential proof of sureties will be verified by the court concerned and in case of breach of any of the above conditions, the court below shall be at liberty to cancel the bail and send the applicant to prison.

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

Order Date :- 25.11.2024
Ram Murti

Digitally signed by :-
RAM MURTI YADAV
High Court of Judicature at Allahabad,
Lucknow Bench