

Court No. - 16

Case :- BAIL No. - 5914 of 2021

Applicant :- Lal Babu

Opposite Party :- State Of U.P. Thru. Prin Secy Home. Lucknow **Counsel for Applicant :-** Shivanshu Goswami, Praveen Kumar Yadav, Shams Tabrez

Counsel for Opposite Party :- G.A.

Hon'ble Siddharth, J.

Heard learned counsel for the applicant and learned A.G.A for the State.

The instant bail application has been filed on behalf of the applicant, **Lal Babu**, with a prayer to release him on bail in Case Crime No. 73 of 2021, under Sections- 8/20 of N.D.P.S. Act, Police Station- Dargah Shareef, District- Bahraich, during pendency of trial.

There is allegation of recovery of 21 Kg 300 gram Charas containing 42 packets from the applicant by the police. Learned counsel for the applicant has submitted that police took 100 gms of Charas only from one packet for sampling which is against the settled rules of the sampling under N.D.P.S. Act. There is no compliance of standing Order no. 1/88 dated 15.3.1988 . Learned counsel for the applicant has submitted that there is no compliance of Section 50 and 57 of the N.D.P.S. Act. At the stage of consideration of bail, it cannot be decided whether offer given to the applicant and his consent obtained was voluntary. These are the questions of fact which can be determined only during trial and not at the present stage. In case of prima facie non-compliance of mandatory provision of Section 50 and 57 of N.D.P.S. Act, the accused is entitled to be released on bail within the meaning of Section 37 of N.D.P.S. Act. The applicant has criminal history of six cases explained in paragraph no. 16 of the affidavit filed

in support of the bail application in which he is on bail in all the cases. He is in jail since 23.02.2021 and he undertakes that he will not misuse liberty, if granted.

Learned A.G.A. has opposed the prayer for bail by contending that the innocence of the applicant cannot be adjudged at pre-trial stage who is involved in supplying contraband, therefore, the applicant does not deserve any indulgence. In case the applicant is released on bail, he will again indulge in similar activity. The reasonable grounds mentioned in Section 37(1)(b)(ii) of N.D.P.S Act mean something more than prima facie ground. It implies substantial probable causes for believing that accused is not guilty of the offence charged and points to existence of such facts and circumstances which are sufficient to hold that accused is not guilty.

However the Apex Court in the case of **Union of India vs. Shiv Shankar Keshari, (2007) 7 SCC 798** has held that the court while considering the application for bail with reference to Section 37 of the Act, is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty.

Considering the facts of the case and keeping in mind the arguments advanced on behalf of the parties, the ratio of the Apex Court's judgment in the case of **Union of India vs. Shiv Shankar Keshari, (2007) 7 SCC 798**, larger mandate of Article 21 of the constitution of India, the nature of accusations, the nature of evidence in support

thereof, the severity of punishment which conviction will entail, the character of the accused- applicant, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interest of the public/State and other circumstances, but without expressing any opinion on the merits, I am of the view that it is a fit case for grant of bail.

Let the applicant 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 subject to following conditions. Further, before issuing the release order, the sureties be verified.

1. 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;

2. 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.

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. 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.

4. The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad.

5. 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.

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

The trial court will make all efforts to conclude the trial against the applicant within a period of one year.

Order Date :- 22.10.2021 Atul kr. sri.

