

(A.F.R.)

Court No. - 77

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13747 of 2021

Applicant :- Gaurav @ Gaura

Opposite Party :- State of U.P.

Counsel for Applicant :- Zia Naz Zaidi, Atul Kumar, Dharmendra Pratap Singh, Praveen Singh

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal, J.

1. Heard Mr. Brijesh Sahai, learned Senior Advocate assisted by Mr. Zia Naz Zaidi, learned counsel for the applicant, Mr. Ajeet Kumar Singh, learned Additional Advocate General assisted by Mr. Vibhav Anand Singh, learned A.G.A. for the State and perused the record.
2. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant seeking enlargement on bail in Case Crime No. 0583 of 2020, under Section 8/21 N.D.P.S. Act, 1985 at Police Station Khatauli, District Muzaffar Nagar.
3. Rejoinder affidavit filed today is taken on record.
4. In compliance of the order dated 9.11.2021, S.S.P., Muzaffar Nagar, namely, Mr. Abhishek Yadav has filed an affidavit wherein it has been stated that the order dated 4.10.2021 was not communicated by the office of Government Advocate as well as the deponent was not aware of the said order and as such he could not file his affidavit.
5. In the compliance affidavit, it has been stated that there are 49 criminal cases registered against the applicant. As per DCRB report, out of 49 cases 48 cases have been registered at P.S. Khatauli, District Muzaffar Nagar and one case i.e., Case Crime No. 420 of 2011 under Section 60 Excise Act r/w Section 272, 273 I.P.C. was registered at P.S. Mansoorpur, District Muzaffar Nagar. It is further stated in paragraph No. 7 of the said affidavit that due to typographical error Police Station of Case Crime No. 420 of 2011 has been typed as Mansoorpur in place of Khatauli. The report provided by DCRB has been annexed as Annexure No. 2 to the compliance affidavit.
6. The explanation referred in the affidavit is found plausible and accepted. The personal presence of S.S.P. Muzaffar Nagar is hereby dispensed with.
7. Now coming to the merits of the case.

8. Learned counsel for the applicant has submitted that the applicant has been falsely implicated in the present case. The applicant has been arrested by the police and from his possession 102.66 gram Alprazolam is said to have been recovered. He has further submitted that nothing has been recovered from the possession of the applicant and the alleged recovery is false and fabricated. It is further submitted that there is no chemical analysis report to prove that the recovered contraband is actually the Alprazolam powder or something else. Learned counsel for the applicant submits that at the time of arrest, mandatory provisions of Section 50 of NDPS Act have not been complied with. Lastly, it is also been submitted by learned counsel for the applicant that he has been implicated in several criminal cases by the police for the reason that the father of the applicant has made several complaints against the police officials of District Muzaffar Nagar.

9. It has been vehemently argued by Mr. Brijesh Sahay, learned Senior Counsel for the applicant that the animus of the police towards the applicant is evident from the fact that the recovery of 102.66 gram Alprazolam has been deliberately shown from the possession of the applicant to make it fall in the category of commercial quantity. The recovery of more than 100 gram Alprazolam falls in the category of commercial quantity. The recovery is a sham.

10. It has been assured on behalf of the applicant that he is ready to cooperate with the process of law and shall faithfully make himself available before the court whenever required. The applicant is languishing in jail since 29.12.2020. He undertakes that he will not misuse the liberty, if granted, therefore, he may be released on bail.

11. On the other hand, learned Additional Advocate General opposed the application on the ground that applicant has criminal history of 48 cases and most of them have been lodged before filing of the said complaint against the police officials. He further submits that criminal antecedent of the accused is to be seen while granting the bail. Their relevance cannot be totally ignored.

12. Per contra, learned counsel for the applicant submits that applicant has already been acquitted in five criminal cases whereas the prosecution in 17 has already come to an end. It is also submitted that the applicant has already been granted bail by this Court as well as by the lower Court in 21 criminal cases after considering the merits of the case. It is further submitted by learned counsel for the applicant that criminal history attributed to the accused applicant is due to the application dated

26.4.2002 which has been filed by the father of the applicant against the police officials. It has also been admitted in the compliance report filed by the S.S.P. that the then Senior Superintendent of Police, Muzaffar Nagar directed the Circle Officer, Khatauli to inquire into the aforesaid matter and submit a report. It has also been fairly admitted by the learned counsel Additional Advocate General that an investigation into the allegations levelled by father of applicant was also taken up by the C.B.C.I.D. against the police officials.

13. In support of his contention learned counsel for the applicant also placed reliance on the case of *Pawan Kumar Pandey Versus State of U.P. reported in [2007 (1) JIC 680 (Allahabad)]* where the accused was allegedly involved in the commission of murder punishable u/s 302 I.P.C., it has been held by the Court that if the accused is otherwise entitled to bail, the same should not be refused simply on the ground of criminal antecedent. It is also argued that the accused in the said case was wanted in 56 criminal cases. Further more the said criminal history of the applicant has already been explained in the supplementary affidavit filed on 23.8.2021.

14. The matter of foisting of frivolous cases against the applicant has already been dealt with by this Court in order dated 9.11.2021. The same is not being reiterated to avoid repetition.

15. The object of grant of bail to an accused of an offence is neither punitive nor preventive in nature. The true object behind granting of bail is to secure appearance of accused during trial. The courts owe more than verbal respect to the principle that punishment begins after convictions and that every man is deemed to be innocent until duly tried and found guilty. From the earlier times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as mark of disapproval of former conduct whether the accused has been convicted for it or not.

16. It has been opined by the *Apex Court in AIR 2012 SC 830 Sanjay Chandra vs. Central Bureau of Investigation* that if bail to an accused under Section 437 or 439 Cr.P.C. is refused by the Court and he is detained in jail for an indefinite period of time and his trial is likely to take considerable time, the same would be violative of his fundamental right as to 'Personal liberty' guaranteed by Article 21 of the Constitution

of India. It has also been opined that seriousness of the offence should not be treated as the only ground for refusal of bail.

17. 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 the accused is entitled to be released on bail within the meaning of Section 37 of N.D.P.S. Act.

18. Interpreting the provisions of bail contained u/s 437 & 439 Cr.P.C., the Supreme Court has laid down following considerations for grant or refusal of bail to an accused in a non-bailable offence:-

(i) Prima facie satisfaction of the court in support of the accusations.

(ii) Nature of accusation.

(ii) Evidence in support of accusations.

(iv) Gravity of the offence.

(v) Punishment provided for the offence.

(vi) Danger of the accused absconding or fleeing if released on bail.

(vii) Character/criminal history of the accused.

(viii) Behavior of the accused.

(ix) Means, position and standing of the accused in the Society.

(x) Likelihood of the offence being repeated.

(xi) Reasonable apprehension of the witnesses being tampered with.

(xii) Danger, of course, of justice being thwarted by grant of bail.

(xiii) Balance between the rights of the accused and the larger interest of the Society/State.

(xiv) Any other factor relevant and peculiar to the accused.

(xv) While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, but if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused.

(See: *Mayakala Dharamaraja vs. State of Telangana*, (2020) 2 SCC 743 and *Lachman Dass vs. Resham Chand Kaler*, AIR 2018 SC 599.)

19. While disposing of bail applications u/s 437/439 Cr.P.C., courts should assign reasons while allowing or refusing an application for bail. But detailed reasons touching the merit of the matter should not be given which may prejudice the accused. What is necessary is that the order should not suffer from non-application of mind. At this stage a detailed examination of evidence and elaborate documentation of the merit of the case is not required to be undertaken. Though the court can make some reference to materials but it cannot make a detailed and in-depth analysis of the materials and record findings on their acceptability or otherwise which is essentially a matter of trial. (See: *CBI vs V. Vijay Sai Reddy*, (2013) 7 SCC 452 and *Kanwar Singh Meena vs. State of Rajasthan*, AIR 2013 SC 296.)

20. According to *Halsbury's Laws of England* - “ the effect of granting bail is not to set the defendant (accused) free, but to release him from custody of law and to entrust him to the custody of his sureties who are bound to produce him to appear at his trial at a specified time and place.”

21. According to *Law Commission's 268th report (2017)*, ‘Bail’ essentially means the judicial interim release of a person suspected of a crime held in custody, on entering into a recognizance, with or without sureties, that the suspect would appear to answer the charges at a later date; and includes grant of bail to a person accused of an offence by any competent authority under law.

22. In *Kamlapati Trivedi vs. State of West Bengal*, 1979 AIR (SC) 777, the Supreme Court of India observed that bail is devised as a technique for effecting a synthesis of two basic concepts of human values, namely the right of the accused to enjoy his personal freedom and the public interest; subject to which, the release is conditioned on the surety to produce the accused person in Court to stand trial.

23. 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.

24. Considering the facts of the case and keeping in mind, the ratio of the Apex Court's judgment in the case of ***Union of India vs. Shiv Shankar Keshari (spura)***, 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.

25. Keeping in view the nature of the offence, evidence on record regarding complicity of the accused, larger mandate of the Article 21 of the Constitution of India and the dictum of Apex Court in the case of ***Dataram Singh Vs. State of U.P. and another reported in (2018) 3 SCC 22*** and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.

26. Let the applicant- ***Gaurav @ Gaura***, who is involved in aforementioned case 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 subject to following conditions (Further, before issuing the release order, the sureties be verified):-

(i) *The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the date 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.*

(ii) *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 IPC.*

(iii) *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., may be issued and if 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 IPC.

(iv) The applicant shall remain present, in person, before the Trial Court on dates fixed for (1) opening of the case, (2) framing of charge and (3) 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.

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

28. It is made clear that observations made in granting bail to the applicant shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

Order Date :- 5.1.2022

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