

Court No. - 71

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 36225 of 2020

Applicant :- Kaleem

Opposite Party :- Narcotics Control Bureau

Counsel for Applicant :- Sunil Kumar Singh, Anil Kumar Srivastava (Senior Adv.), Mohd. Naushad

Counsel for Opposite Party :- Ashish Pandey

Hon'ble Vivek Kumar Singh, J.

Heard Sri Anil Kumar Srivastava, learned Senior Advocate assisted by Sri Mohd. Naushad, learned counsel for the applicant, Sri Ashish Pandey, learned counsel for the Department and perused the record.

The submission of learned counsel for the applicant is that the applicant has been falsely implicated in the present case due to ulterior motive. It is further submitted that the applicant has no concern with the alleged offence, neither he was arrested from the spot nor the vehicle in question belongs to him, however, only on the basis of statements of co-accused persons he has been arrested, as also nothing was recovered from the applicant's possession. It is further argued that the recovery memo was prepared in a routine manner whereas it had to be done in the presence of a Magistrate and there is no independent eye witness of the alleged recovery. Learned counsel for the applicant further submitted that the applicant has been falsely implicated on the basis of false and planted recovery of two lots of 22 packets each i.e. 44 packets (containing 5 Kg. substance each); and one lot of remaining 5 packets (containing 3 Kg. substance each), weighing 235 Kg. *Ganja*, recovered from the joint possession of Nadeem Ansari and Abid, driver and cleaner of the vehicle in question. One Mobin Ahmad Ansari was the owner of the truck. The applicant has been dragged falsely in the present case, whereas he has no concern with the alleged offence. It is further contended that mandatory provisions of Section 50 of N.D.P.S. Act have not been complied with. 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. The applicant has criminal history of two cases wherein he is on bail, which have properly been explained in paragraph-18 of the affidavit filed in support of bail application. It is also submitted that the applicant is jail since 8.3.2020 and he undertakes that he will not misuse liberty, if granted.

Learned counsel for the department as well as learned A.G.A. have 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 NDPS 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. Learned counsel for the Department placed reliance on a judgement of the Supreme Court dated 19.8.2021 passed in the case of Union of India v. Vimla Singh in Criminal Appeal No. 862 of 2021.

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.

Courts have taken notice of overcrowding of jails during the current pandemic situation (Ref.: Suo Motu Writ Petition (c) No. 1/2020, Contagion of Covid 19 Virus in prisons before the Supreme Court of India). These circumstances shall also be factored in while considering bail applications on behalf of accused persons.

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 - **Kaleem** involved in Case Crime No. VIII/26/DZU of 2019, under Sections 20, 25, 29 of N.D.P.S. Act, Police Station N.C.B.D.Z.U. Delhi, District Meerut be released on bail on his furnishing a personal bond with two sureties of Rs. Three Lakh each with the following condition:-

(i) 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;

(ii) 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.

(iii) 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.

Order Date :- 31.8.2021

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