

Court No. - 16

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Case :- BAIL No. - 73 of 2021

Applicant :- Kaleem

Opposite Party :- U.O.I. Through Intelligence Officer,N.C.B., Lucknow

Counsel for Applicant :- Indrajeet Shukla

Counsel for Opposite Party :- Shikha Sinha,Akhilesh Kumar Awasthi

Hon'ble Siddharth,J.

Heard learned counsel for applicant Shri Akhilesh Kumar Awasthi, learned counsel for the N.C.B. and perused the record.

This bail application has been preferred by the accused-applicant, Kaleem, who is involved in Case Crime No.03 of 2019 (Special Session Trial No. 119 of 2019) under Section 8/20/29/60(3) N.D.P.S. Act, Police Station- N.C.B. Lucknow, District- Faizabad.

Learned counsel for the applicant has submitted that applicant has been falsely implicated in the present case due to ulterior motive, on the basis of false and planted recovery of 349.250 Kg. Ganja and there is no public witness of the alleged recovery. Learned counsel for the applicant has further submitted that mandatory provision of Section 50 of N.D.P.S Act has not been complied with. 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. The applicant has no criminal history to his credit. It is also submitted that the applicant is in jail since 18.1.2019 and he undertakes that he will not misuse liberty, if granted.

Learned counsel for N.C.B., Shri Akhilesh Kumar Awasthi 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 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.

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 applicant, Kaleem , be released on bail in the aforesaid case crime number on his furnishing a personal bond and two reliable sureties of the like amount to the satisfaction of the court concerned with the following conditions-

(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.

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

(v) 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.

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

Order Date :- 21.10.2021

Atul kr. sri.