

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12994 of 2020

Applicant :- Suraj Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Vivek Prakash Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Siddharth,J.

Order on the Exemption Application.

The application is allowed.

Order on the bail application.

In view of the guidelines laid down by this Court, the urgent bail applications have been directed to be heard through Video Conferencing.

Heard Sri Anoop Trivedi, learned Senior Counsel assisted by Sri Vivek Prakash Mishra, learned counsel for the applicant and learned A.G.A through Video Conferencing.

This bail application has been directly filed before this court under Section 439 Cr.P.C without approaching the court below. Therefore the counsel for the applicant submits that the powers under Section 439 Cr.P.C should be exercised in this case by the High Court since the Courts at Mathura are not functioning on account of lockdown. His submission is that the powers under Section 439 Cr.P.C can be exercised by this court directly as held in paragraph 20 of the judgment of ***Sandeep Kumar Bafna vs. State of Maharashtra and Another, 2014(16) SCC 623***, wherein Apex Court has held that the High Court has power and jurisdiction to entertain the plea of surrender and also bail thereafter directly without compelling the accused to first approach the court of Sessions. In the aforesaid judgment the Apex Court has considered the mandate of Article 21 also.

After going through the judgment of the Apex Court in the case of ***Sandeep Kumar Bafna (Supra)*** this court finds that the Bombay High Court rejected the accused's bail application on the ground that it had no jurisdiction accept the custody of the accused, the Supreme Court directed the High Court to accept the custody and decide the bail

application on merit, on the basis that no provision categorically prohibits the production of accused before either of the courts.

After considering the submission made by the counsel for the applicant, this court finds that in the present case no issue of surrender of accused is involved. Accused-applicant is already in jail since 19.4.2020. Only question of consideration of the bail application to the accused applicant is before this court since he has not been able to approach the court of Sessions on account of the lockdown consequent to Covid-19 scare.

Extraordinary circumstances requires extraordinary remedies and therefore this court is inclined to consider the present bail application in exercise of its power under Section 439 Cr.P.C., but without making it a precedent for normal times.

It is contended by learned counsel for the applicant that applicant is Manager of Cargo Company known as M/s Om Logistics Limited. It was transporting the goods belonging to Novitas Company and it was being supplied to M/s Cargo Traders. The goods are stated to be 21600 bottles of cough syrup (Codeine), which contains some amount of banned drugs. The case of the applicant is that he was Manager of Transport Company and has nothing to do with the chemical composition of syrup being transported or legal requirements of its contents, which was concern with the manufacturer and purchaser. The applicant has approached directly before this Court since District Mathura is under Red Zone due to Covid-19. The applicant has no criminal history to their credit. The applicant is in jail since 19.4.2020.

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 applicants have made out a case for bail. The bail application is allowed.

Let the applicant, **Suraj Kumar**, who is involved in **Case Crime No. 276 of 2020, under sections 420, 467, 468, 471 IPC r/w Section 8/21 NDPS Act, P.S. Kosi Kalan, District- Mathura**, 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 not tamper with the prosecution evidence by intimidating/ pressurizing the witnesses, during the investigation or trial.
2. The applicant shall cooperate in the trial sincerely without seeking any adjournment.
3. The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.
4. In case the applicant has been enlarged on short term bail as per the order of committee constituted under the orders of Hon'ble Supreme Court their bail shall be effective after the period of short term bail comes to an end.
5. The applicant shall be enlarged on bail on execution of personal bond without sureties till normal functioning of the courts is restored. The accused will furnish sureties to the satisfaction of the court below within a month after normal functioning of the courts are restored.
6. The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad.
7. 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.

Order Date :- 1.6.2020

Ruchi Agrahari