

Applicant :- Rajneesh Kumar Gupta Second Bail

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

Counsel for Applicant :- Anil Kumar Pandey

Counsel for Opposite Party :- Shikha Sinha, Akhilesh Awasthi

Hon'ble Dinesh Kumar Singh,J.

1. Heard Mr. Anil Kumar Pandey, learned counsel for the accused-applicant, as well as Mr. Akhilesh Awasthi, learned counsel for respondent-NCB, on this second application for bail, and gone through the entire record.
2. By means of this application under Section 439 CrPC, the accused-applicant seeks bail in N.C.B. Crime No.18 of 2020, under Sections 8/18/29 NDPS Act, Challaned by Narcotics Control Bureau Lucknow, District Lucknow.
3. The first bail application, filed by the accused-applicant, being Bail No.8565 of 2020, was rejected by this Court vide order dated 25.01.2021.
4. As per the allegations, 13.8 Kg opium was recovered from Truck No. U.P. 25 DT 4386, which was driven by co-accused Kauser Husain; the truck was coming from Latehar, Jharkhand to Lucknow via Bareilly; the accused-applicant was the owner of the truck; co-accused, Kauser Hussain, in his statement under Section 67 of the N.D.P.S. Act, had stated that the accused-applicant was the main person, who sent his truck to Latehar, Jharkhand to bring the opium, which was to be delivered to the accused-applicant; call details of the present accused-applicant and co-accused at Latehar, Jharkhand, from whom the opium was procured, would demonstrate that the accused -applicant was in constant touch with the person from whom the opium was brought in truck driven by co-accused Kauser Hussain.
5. Submission made on behalf of the accused-applicant is that the accused-applicant has no criminal history; the accused-applicant has been languishing in jail since 15.07.2020; except for the alleged statement of co-accused, there is no other evidence against the accused-applicant.
6. This Court vide order dated 21.12.2021 directed the accused-applicant to bring a demand draft of Rs. 5 Lacs in favour of 'Army Battle Casualty Welfare Fund' for considering the bail prayer.
7. On behalf of respondent-NCB, it has been submitted that the earlier bail application of the accused-applicant was rejected on the ground that a huge quantity of opium was recovered from the truck owned by the accused-applicant and, the co-accused, in his statement under Section 67 of the NDPS Act, has specifically named the accused-applicant to whom the opium was to be delivered, which was brought from Latehar, Jharkhand.

8. Considering the fact as of today, except for the statement of co-accused recorded under Section 67 of the NDPS Act, there is no other evidence to bring the charge home against the accused-applicant and considering the provisions of Section 37 (1-B) of the NDPS Act, it would be appropriate to enlarge him on bail with the following conditions:-

- (i) the applicant shall deposit the said bank-draft in the account of 'Army Battle Casualty Welfare Fund' and submit a receipt thereof before the trial Court. If the receipt is submitted then the trial Trial shall enlarge applicant-**Rajneesh Kumar Gupta**, accused of above-mentioned crime number, on bail on, **his** furnishing a personal bond and two sureties each, in the like amount to the satisfaction of the Court concerned.
- (i-a) the applicant shall file an undertaking to the effect that **he** shall not seek any adjournment on the dates 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 of the Indian Penal Code;
- (iii). in case, the applicant misuse(s) the liberty of bail and in order to secure **his** presence proclamation under Section 82 Cr.P.C. is issued and the applicant(s) fail(s) 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; and
- (iv) 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.

9. The party shall file self attested computer generated copy of this order downloaded from the official website of High Court Allahabad. 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.

[D.K.Singh,J.]

Order Date :- 13.1.2022

MVS/-