

In Chamber

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 3837 of 2020

Applicant :- Vinod Baruaar

Opposite Party :- State of U.P.

Counsel for Applicant :- Shahroze Khan, Mohitosh Singh

Counsel for Opposite Party :- G.A.

Hon'ble J.J. Munir, J.

This is an application for bail on behalf of the applicant, Vinod Baruaar in connection with Case Crime No. 101 of 2019, under Section 8/20 N.D.P.S. Act and Section 41/411, 413 IPC P.S. Dumariyaganj District Siddharth Nagar.

Perused the affidavit filed in support of the bail application and the documents filed in support as annexures. It appears from a perusal of the affidavit that the applicant has been apprehended on a prior disclosure that he had on his person narcotics, that is to say, *charas* and is further said to have made a disclosure that the motorcycle that he was riding is one stolen from Gonda. It is asserted in paragraph no. 5 of the affidavit that the applicant has been falsely implicated in order to earn an award from the State or the higher police officials. It is specifically set out in paragraph no. 7 of the affidavit that though the police had acquired prior knowledge of the possession of the contraband by the applicant but the information has not been transmitted in writing to the higher police authorities which constitute violation of Section 42 of the N.D.P.S. Act. It is also asserted that no public witness has been secured. A violation of Sections 52, 55 and 57 N.D.P.S. Act have also been claimed. It is also asserted that the applicant was arrested from his house and the *charas* has

been planted on him, along with the stolen motorcycle. It is also stated that the recovery of *charas* is below the commercial quantity. In paragraph no. 15 of the affidavit, the applicant has disclosed his criminal history which does not relate to the N.D.P.S. Act. The applicant is said to have in jail since 02.06.2019.

Notice of this bail application was served upon the learned Government Advocate on 16.02.2020 but no counter affidavit has been filed or written submissions filed by the State.

Considering the entire facts and circumstances of the case, the nature of allegations, the gravity of the offence, the severity of punishment, the evidence appearing in the case, in particular, the fact that prima facie there is no compliance with Section 42, 52, 55 and 57 of the N.D.P.S. Act, the fact that there is no public witness of the recovery, the fact that the recovery of narcotic is below the specified commercial quantity, the fact that applicant has no criminal history relevant to the offence under N.D.P.S. Act, but without expressing any opinion on merits, this Court, finds it to be a fit case for bail.

The Division Bench of this Court in Public Interest Litigation (PIL) No. 564 of 2020 has taken note of unprecedented threat caused by Novel Corona Virus (Covid-19) on the one hand and the other, the difficulties that arise out of verification of sureties given the conditions of lockdown leading to obstruction in the execution of bail orders. In this regard, the Division Bench passed the following orders:

“(ii) It is brought to our notice that before enforcement of the lockdown different courts in the State of Uttar Pradesh including the High Court have granted orders to release the accused-applicants on bail but they have not been released so far due to non-availability of sureties.

Looking to impediments in arranging sureties because of lockdown, while invoking powers under Article 226 and 227 of the Constitution of India, we deem it appropriate to order that all the accused-applicants whose bail applications came to be allowed on or after 15th March, 2020 but have not been released due to non-availability of sureties as a consequence to lockdown may be released on executing personal bond as ordered by the Court or to the satisfaction of the jail authorities where such accused is imprisoned, provided the accused-applicants undertakes to furnish required sureties within a period of one month from the date of his/her actual release.”

In view of what has been said above, this Bail Application stands **allowed**.

Let the applicant **Vinod Baruaar** in connection with Case Crime No. 101 of 2019, under Section 8/20 N.D.P.S. Act and Section 41/411, 413 IPC P.S. Dumariyaganj, District Siddharth Nagar, be released on bail on his executing a personal bond before the Court concerned provided the applicant undertakes to furnish two sureties each in the like amount to the satisfaction of the court concerned within one month of the date of his release from jail subject to the the following conditions:

- i) The applicant shall not tamper with the prosecution evidence.
- ii) The applicant shall not threaten or harass the prosecution witnesses.
- iii) The applicant shall appear on the date fixed by the Trial Court.
- iv) The applicant shall not commit an offence similar to

the offence of which the applicant is accused, or suspected of the commission.

v) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade such person from disclosing facts to the Court or to any police officer or tamper with the evidence.

vi) The applicant shall cause to be filed before the Court empowered to release the applicant in compliance with this order a computer generated copy of this order downloaded from the official website of the Allahabad High Court.

vii) The computer generated copy of this order shall be attested by the learned Counsel for the applicant, who files that copy before the Court empowered to release.

viii) The Court concerned shall verify the authenticity of the said computer generated and attested copy of the order from the official website of the Allahabad High Court, and shall endorse in his hand a certification to the effect that he has undertaken a verification of the copy of this order as aforesaid in the manner above directed.

In case of default of any of the conditions nos. i) to v) enumerated above, the prosecution would be free to move an application for cancellation of bail before this Court.

It is clarified that anything said in this order is limited to the purpose of determination of this bail application and will in no way be construed as an expression of opinion on the merits of the case. It is further clarified that the Trial Court shall be absolutely free to arrive at its independent

conclusions on the basis of evidence led, unaffected by anything said in this order.

Order Date :- 9.4.2020

Deepak