

Bundoo vs State Of U.P. on 1 April, 2025

Author: Siddharth

Bench: Siddharth

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:44800

Court No. - 47

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45728 of 2024

Applicant :- Bundoo

Opposite Party :- State of U.P.

Counsel for Applicant :- Harsh Vardhan, Sunil Kumar Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Siddharth, J.

Heard learned counsel for the applicant, learned A.G.A for the State and perused the material placed on record.

The instant bail application has been filed on behalf of the applicant, Bundoo, with a prayer to release him on bail in Case Crime No. 0621 of 2024, under Sections- 21/22 N.D.P.S. Act, Police Station- Sardhana, District- Meerut, pendency of trial.

There is allegation of recovery of 0.25 mg of alprazolam amounting to 8250 tablets have been made from the applicant.

Counsel for the applicant submits that the quantity of alprazolam allegedly recovered from the applicant is much below commercial quantity.

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 0.25 mg of alprazolam amounting to 8250 tablets and there is no public witness of the alleged recovery. He next submitted that the mandatory provisions contained in Sections 41, 50, 52, 53 and 57(2) of the NDPS Act were not complied with while making the alleged search and recovery. 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 is languishing in jail since 15.11.2024. He has no criminal history to his credit. In case he is enlarged on bail, he will not misuse the liberty of bail.

Learned A.G.A. 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 N.D.P.S. 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 the applicant involved in the aforesaid crime 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 with the following conditions that :-

- (i) The applicant shall not tamper with the evidence or threaten the witnesses.
- (ii) 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.
- (iii) The applicant shall remain present before the Trial Court on each date fixed, either personally or as directed by the Court. In case of his absence, without sufficient cause, the Trial Court may proceed against him under Section 229-A of the Indian Penal Code.
- (iv) In case the applicant misuses the liberty of bail during trial 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.
- (v) 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 absence of the applicant is deliberate or without sufficient cause, then it shall be open for the Trial Court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

In case, of breach of any of the above conditions, it shall be a ground for cancellation of bail.

Identity, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

Order Date :- 1.4.2025 Rohit