

**HIGH COURT OF JUDICATURE AT ALLAHABAD****Bench: Mohd. Faiz Alam Khan, J.****Date of Decision: 4.10.2023**

CRIMINAL MISC. BAIL APPLICATION No. - 10211 of 2023

**Prem Paudel ..... Applicant****Versus****Union Of India Thru. Intelligence Office N.C.B. .... Opposite Party**

Counsel for Applicant :- Piyush Kumar Singh

Counsel for Opposite Party :- Akhilesh Kumar Awasthi

**Section, Acts, Rules, and Articles:**

Sections 8, 18, 23, 29, 37(1), 50 of the Narcotic Drugs &amp; Psychotropic Substances (NDPS) Act

Standing Order No. 1/1989 dated 13.06.1989

**Subject:** Second bail application under the Narcotic Drugs & Psychotropic Substances Act for the applicant Prem Paudel, following the rejection of the first bail application.**Headnotes:**

*Criminal Misc. Bail Application – Second Attempt – Applicant Prem Paudel seeks bail in a case under the N.D.P.S. Act, having previously been denied by the Court – Application filed for reconsideration based on material change in circumstances. [Para 1-3]*

*Prosecution Case – Claimed violation of Sections 8/18/23/29 of the NDPS Act by the applicant – Counsel for the accused argues false implication, non-compliance with Section 50 of the NDPS Act, and non-procurement of independent public witness by N.C.B. [Para 4-6]*

*Material Change in Circumstances – Co-accused Sita Nepali granted bail by a Coordinate Bench, making it a material change in circumstances for the applicant – Counsel contends identically placed accused has been granted bail. [Para 6-7]*

*Opposition by N.C.B. – Counsel for the Opposite Party opposes bail, highlighting the Nepali citizenship of the applicant and questioning the merits of the prior bail given to the co-accused, Sita Nepali. [Para 8]*

*Judicial Analysis – Court observes that identically placed co-accused has been granted bail and that the applicant has been detained for over six years – Concludes that this constitutes a material change in circumstance and*

*addresses concerns of the N.C.B. regarding the applicant's availability for trial. [Para 9]*

*Decision – Bail granted to the applicant subject to conditions, including not tampering with evidence and cooperating in the trial – Non-compliance with any condition will result in the cancellation of bail. [Para 10-12]*

**Referred Cases:** None.

**Representing Advocates:**

Counsel for Applicant: Piyush Kumar Singh

Counsel for Opposite Party: Akhilesh Kumar Awasthi

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Hon'ble Mohd. Faiz Alam Khan,J.

1. Counter affidavit filed on behalf of the N.C.B. is taken on record.
2. Heard Shri Piyush Kumar Singh, learned counsel for the accused-applicant as well as Shri Akhilesh Kumar Awasthi, learned counsel appearing for the N.C.B. and perused the record.
3. This second bail application has been moved by the accused/applicant-Prem Paudel for grant of bail, in Case Crime No.12 of 2017, under Sections 8/18/23/29 of the Narcotic Drugs & Psychotropic Substances Act, Police Station N.C.B., Lucknow, District Bahraich, during trial as his first bail application has been rejected vide order dated 06.05.2022 by a Coordinate Bench of this Court passed in Criminal Misc. Bail Application No.1409 of 2018.
4. Learned counsel for the accused-applicant while pressing the bail application submits that the applicant has been falsely implicated in this case and no contraband as claimed by the prosecution has been recovered from the possession of the applicant.
5. It is further submitted that despite having prior opportunity and occasion to procure independent public witness, no serious efforts appears to have been made by the N.C.B. officials/officers and S.S.B., officials/officers to procure independent public witness, thus recovery as well as arrest is vitiated for want of independent public witness.
6. It is also submitted that even if the case of the prosecution is taken on its face, as is reflected from the arresting/recovery memo, Section 50 of the N.D.P.S. Act has not been complied in letter and spirit and the samples has also not been drawn in compliance of the Standing Order No..1/1989 dated 13.06.1989. It is also submitted that the applicant is in jail in this case since 02.07.2017 and till now the trial has not been concluded and while four prosecution witnesses have been examined before the trial court, the same is not expected to conclude in near future, moreover identically placed co-accused person namely Sita Nepali has been granted bail by a Coordinate Bench of this Court vide order dated 14.07.2023 passed in Criminal Misc. Bail Application No.11853 of 2019 and the grant of bail to co-accused Sita Nepali is material change in circumstance since rejection of first bail application of the applicant.

7. It is also submitted that 4kg. of opium is shown to have been recovered from the possession of the applicant while the commercial quantity of the same starts from 2.5kg. Applicant is not having any criminal history and there is no apprehension that after being released on bail he may flee from the course of law or may otherwise misuse the liberty.

8. Shri Akhilesh Kumar Awasthi, learned counsel appearing for the N.C.B., however, opposes the prayer of bail of the applicant on the ground that first bail application of the applicant has been rejected on merits by passing detailed order and in the order dated 14.07.2023, whereby the facility of bail has been extended to co-accused Sita Nepali, recording of only one prosecution witness has not been recorded correctly as till that time four prosecution witnesses have been examined. The applicant is a Nepali citizen and it would be difficult to procure his presence before the trial court and having regard to the material/evidence available against the applicant, he is not entitled to be released on bail.

9. Having heard learned counsel for the parties and having perused the record, it is evident that in total 7.50kg of opium is shown to have been recovered from the possession of the co-accused Sita Nepali and applicant, 4kg opium is shown to have been recovered from the possession of the applicant. As per report submitted by the trial court/special court of date 01.09.2023, four prosecution witnesses have been testified so far while it is claimed by learned counsel appearing for the N.C.B. that in chief examination of fifth prosecution witness has been recorded and the cross examination is pending. It is not in dispute that identically placed co-accused person namely Sita Nepali has been granted bail by a Coordinate Bench of this Court vide order dated 14.07.2023 on the ground that Section 50 of the N.D.P.S. Act appears to have not been complied in letter and spirit and prima facie the manner in which the sampling has been done, appears contrary to the circular issued in this regard and these aspects would be taken care of at the time of trial. Nothing has been brought before this Court, which may suggest that order of bail passed in favour of co-accused Sita Nepali has been challenged at any higher forum or has been cancelled by the same court, which has granted the facility of bail. Admittedly the role of instant applicant is identical to the role of co-accused Sita Nepali, who has been granted facility of bail. Detention of more than 6 years in this case and the release of the identically placed co-accused person namely Sita Nepali, in the considered opinion of this Court, are sufficient ground to infer material change in circumstances since rejection of first bail application of the applicant and also to exercise discretion in favour of the applicant. For the reasons mentioned herein-before, the twin stringent conditions mentioned under Section 37(1)(b) of the N.D.P.S. Act, in the considered opinion of this Court, stands satisfied and the facility of bail on the principle of parity may be granted to the applicant. The apprehension of the N.C.B. that the applicant is a Nepali citizen and would not be available for trial, may be taken care of by imposing suitable conditions on the applicant to furnish local sureties. Presence of the applicant may also be secured before the trial court by placing adequate conditions/restrictions.

10. Having regard to the overall facts and circumstances of the case and keeping in view the nature of the offence, evidence, complicity of the accused, severity of punishment, submissions of the learned counsel for the parties and without expressing any opinion on the merits of the case, I am of the considered view that applicant has made out a case for bail. The bail second application is thus allowed.

11. Let the accused/applicant- Prem Paudel involved in above-mentioned case, be released on bail on his furnishing a personal bond with two local sureties in the like amount to the satisfaction of the court concerned subject to following conditions:-

(i) The applicant shall not tamper with the prosecution evidence by intimidating/pressurizing the witnesses, during the investigation or trial.

(ii) The applicant shall cooperate in the trial sincerely without seeking any adjournment.

(iii) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

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

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

14. Observations made herein-above by this court are only for the purpose of disposal of this bail application and shall not be construed as an expression on the merits of the case.

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