

**Court No. - 78**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 29477 of 2022

**Applicant :-** Kaushal Kishor

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Nirbhay Singh

**Counsel for Opposite Party :-** G.A.

**Hon'ble Ali Zamin,J.**

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

The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.302 of 2022, under Section 8/20 N.D.P.S. Act, Police Station Ujhani, District Budaun.

Learned counsel for the applicant submits that according to prosecution version on 25.05.2022 from the joint possession of the applicant and co-accused Daini @ Kunal 10 Kg Ganja was allegedly recovered. There is no independent witness of the alleged recovery to connect the applicant with the recovery. He further submitted that co-accused Daini @ Kunal, has been granted bail by co-ordinate Bench of this Court vide orders dated 22.07.2022, in Criminal Misc. Bail Application No.29693 of 2022, therefore, the applicant is entitled for bail on the ground of parity. He further submits that the recovered quantity is below to the commercial quantity and mandatory provision of Sections 42, 50, 52 & 57 has not been complied with and has been falsely implicated in the case. The applicant has no criminal history, as per para 10 of the affidavit filed in support of bail application. There is no possibility of the applicant of fleeing away from the judicial process or tampering with the witnesses and, in case, the applicant is enlarged on bail, the applicant shall not misuse the liberty of bail. It is next contended that there is no criminal history of the applicant and he is languishing in jail since 25.05.2022.

Per contra, learned A.G.A. has opposed the bail prayer of the applicant but could not dispute the aforesaid fact and submitted that there is no reason to falsely implicate the applicant in the present case, therefore, the applicant is not entitled for bail.

Considering the facts and circumstances of the case as well as submissions advanced by learned counsel for the parties and also perusing the material on record, no independent witness of recovery, no criminal history of the applicant, enlargement of identically placed co-accused Daini @ Kunal, without

expressing any opinion on merit of the case, the applicant is entitled for bail, let the applicant-**Kaushal Kishor** involved in aforesaid case crime be released on bail on his furnishing a personal bond and two local sureties each of the like amount to the satisfaction of the court concerned, subject to the following conditions :-

(i) The applicant shall file an undertaking to the effect that he will not tamper with the evidence and will not pressurize/intimidate the prosecution witnesses and will cooperate with the trial. The applicant 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 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.

(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 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.

**Order Date :- 25.7.2022/VKG**