

Court No. - 66

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 3945 of 2022

Applicant :- Shiv Shankar Harijan

Opposite Party :- State of U.P.

Counsel for Applicant :- Ashok Malaviya

Counsel for Opposite Party :- G.A.,Anil Kumar,Saurabh Sachan

Hon'ble Ajay Bhanot,J.

By means of the bail application the applicant has prayed to be enlarged on bail in S.T.No.361 of 2021, Case Crime No.144 of 2021 at Police Station-Kotwali Dehat, District-Mirzapur under Sections 302, 201, 435 IPC. The applicant is in jail since 08.08.2021.

The bail application of the applicant was rejected by the learned trial court on 22.12.2021.

Shri Ashok Malaviya, learned counsel on behalf of the applicant points out that the learned counsel for the informant has been repeatedly seeking adjournments. He calls attention to various orders on which the matter was adjourned at the request of learned counsel for the informant on pretext of the other.

Since the applicant is in jail since 08.08.2021, the illness slip sent by the learned counsel for the informant is rejected.

The following arguments made by Shri Ashok Malaviya, learned counsel on behalf of the applicant, which could not be satisfactorily refuted by Shri Paritosh Kumar

Malviya, learned AGA-I from the record, entitle the applicant for grant of bail:

1. Delay in lodgment of the F.I.R. in the facts and circumstances of this case is fatal to the prosecution case.
2. The applicant has been nominated solely on the basis of suspicion. Suspicion howsoever grave, is no substitute for evidence.
3. There is no direct evidence against the applicant.
4. This is a case of circumstantial evidence and the chain of incriminating circumstances against the applicant is not complete.
5. No incriminating material has been recovered from the applicant.
6. The evidence of last seen is unreliable.
7. The applicant does not have any criminal history apart from this case.
8. The applicant is not a flight risk. The applicant being a law abiding citizen has always cooperated with the investigation and undertakes to cooperate with the court proceedings. There is no possibility of his influencing witnesses, tampering with the evidence or reoffending.

In the light of the preceding discussion and without making any observations on the merits of the case, the bail

application is allowed.

Let the applicant-Shiv Shankar Harijan be released on bail in the aforesaid case crime number, on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court below. The following conditions be imposed in the interest of justice:-

(i) The applicant will not tamper with the evidence or influence any witness during the trial.

(ii) The applicant will appear before the trial court on the date fixed, unless personal presence is exempted.

Order Date :- 7.11.2023

Ashish Tripathi