

Court No. - 77

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12456 of 2023

Applicant :- Chand Miyan

Opposite Party :- State of U.P.

Counsel for Applicant :- Dileep Singh Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Mrs. Renu Agarwal,J.

1. Supplementary affidavit filed today is taken on record.
2. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.
3. The present first bail application has been filed on behalf of the applicant in Case Crime No. 736 of 2016 under Sections 395, 397, 412 I.P.C. Police Station Tirwa, District Kannauj with the prayer to enlarge him on bail.
3. Learned counsel for the accused-applicant submitted that the applicant is innocent and has been falsely implicated in the instant case due to malafide intentions. It is submitted that F.I.R. has been lodged against 7-8 unknown persons and it is alleged in the F.I.R. that accused persons have looted Rs. 20,000/- cash, Jewellery amounting to Rs. 20,000/-, mobile and clothes from the informant's house and assaulted the brothers and sister of the informant with Lathi and Danda. It is further submitted that F.I.R. was lodged against unnamed persons and later on certain recoveries of the present case are said to have been recovered from the possession of the applicants and after one month and four days. It is contended that police has shown recovery of a country made pistol 315 bore, one mobile and case

of Rs. 100/- from the possession of the applicant. It is next contended that similarly situated co-accused persons, Dilnashi, Saddam, Shanu, Janisar and Jaan @ Rohit Ginga have already been enlarged on bail by co-ordinate Bench of this Court vide orders dated 29.11.2017 and 05.12.2017 passed in Criminal Misc. Bail Application Nos. 46392 of 2017 and 47537 of 2017 respectively. The applicant is languishing in jail since 06.12.2016 having criminal history one case i.e. case crime No. 656 of 2017 in which he has been enlarged on bail and copy of bail order is annexed as Annexure No. S.A. 2 to the supplementary affidavit filed today. It is lastly submitted that since the role of the present applicant is identical to that of co-accused, who has already been enlarged on bail, present applicant is also entitled to be enlarged on bail on the ground of parity and if he is granted the liberty of bail he will not misuse the same and he is ready to furnish his sufficient sureties, bonds and personal bonds.

4. On the other hand, learned AGA has vehemently opposed the prayer for bail but could not controvert the fact that identically situated co-accused has been enlarged on bail.

5. Considering the fact that applicant was not named in the F.I.R. and his name surfaced during investigation, there is no public witness of the alleged recovery, criminal history is well explained coupled with the fact that identically situated co-accused have been enlarged on bail and without expressing any opinion on the merits of the case, accused-applicant is liable to be released on bail.

6. Let applicant **Chand Miyan** be released on bail in the above case crime number

and on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of Court concerned with the following conditions :-

(i) 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.

(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.

(v) The applicant shall also furnish an undertaking from the sureties that the properties (movable/immovable) which are the basis of accepting the surety, shall not be disposed of by them till the conclusion of trial.

(vi) The applicant shall also give an undertaking to the effect that he will not change his address without prior intimation to the trial court concerned.

(Renu Agarwal,J.)

Order Date :- 16.10.2023

Karan