

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 15341 of 2023

Applicant :- Arpit Yadav

Opposite Party :- State of U.P.

Counsel for Applicant :- Dinesh Kumar Gupta, Kapil Kumar, Kuldeep Singh Chahar

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Heard Shri Kapil Kumar, learned counsel for the applicant and Shri Pradeep Kumar, learned AGA for the State-respondent.
2. The instant second bail application has been filed seeking release of the applicant on bail in Case Crime No.172 of 2022, under Section 394 IPC, Police Station Lalkurti, District Meerut, during pendency of the trial in the court below.
3. Learned counsel for the applicant submits that this is the second bail application filed on behalf of the applicant and first bail application of the applicant has been dismissed by this Court vide order dated 28.01.2023 passed in Criminal Misc. Bail Application No.135 of 2023 and he is pressing the instant second bail application on two grounds. Firstly, after rejection of the first bail application of the applicant, the bail application of the co-accused Jatin has been allowed by Co-ordinate Bench of this Court vide order dated 09.08.2023 passed in Criminal Misc. Bail Application No.34918 of 2023 and however applicant alleged to have been arrested at spot but admittedly no recovery was made from his possession and

looted mobile phone of the informant recovered from the possession of co-accused Jatin, therefore, applicant also may be released on bail. Secondly, all the offences are triable by Magistrate Ist Class and applicant is in jail since 28.11.2022 i.e. for last more than a year.

4. He further submits that in the FIR, informant categorically stated that due to the assault made by applicant and his associates, he also sustained serious injuries but he was never medically examined and in Para 9, he has specifically made averment in this regard and this fact clearly shows that merely on the basis of suspicion, applicant, who was present nearby the spot, was apprehended and he in fact never participated in the alleged crime.

5. He further submits that however applicant is having criminal history of three cases but his criminal history has been explained in the instant bail application and out of three cases, two cases were of Section 323 I.P.C. and one case was of Section 279 I.P.C.

6. Per contra, learned AGA opposed the prayer for bail and submits that this is the second bail application filed on behalf of the applicant and first bail application of the applicant has been dismissed by this Court vide order dated 28.01.2023, however could not dispute, all the offences are triable by Magistrate Ist Class and applicant is in jail since 28.11.2022 i.e. for last more than a year and after rejection of the first bail application of the applicant, co-accused Jatin has been released on bail and looted mobile phone of the informant

was recovered from the possession of co-accused Jatin.

7. I have heard learned counsel for both the parties and perused the record of the case.

8. This is the second bail application filed on behalf of the applicant and first bail application of the applicant has been dismissed by this Court vide order dated 28.01.2023 on merits but it reflects from the record that and after rejection of the first bail application of the applicant, the bail application of the co-accused Jatin has been allowed by Co-ordinate Bench of this Court vide order dated 09.08.2023 and as per prosecution, looted mobile phone of the informant was recovered from the possession of co-accused Jatin and admittedly no recovery was made from the possession of the applicant, however, applicant said to have been arrested at spot.

9. Further, all the offences are triable by Magistrate Ist Class and applicant is in jail since 28.11.2022 i.e. for last more than a year.

10. Further, applicant is however having criminal history of three cases but his criminal history has been explained in the instant bail application and out of three cases, two cases were of Section 323 I.P.C. and one case was of Section 279 I.P.C.

11. Therefore, considering the facts and circumstances of the case, discussed above, in my view, applicant is entitled to be released on bail.

12. Accordingly, without expressing any opinion on the merits of the case, the instant second bail application is Allowed.

13. Let the applicant- **Arpit Yadav**, be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicant shall appear before the trial court on the dates fixed, unless his personal presence is exempted.

(ii) The applicant shall not directly or indirectly, make inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or any police officer or tamper with the evidence.

(iii) The applicant shall not indulge in any criminal and anti-social activity.

14. In case of breach of any of the above condition, the prosecution will be at liberty to move an application before this Court for cancellation of the bail of the applicant.

15. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial.

Order Date :- 7.12.2023

Zafar