

Court No. - 71

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 19995 of 2023

Applicant :- Prishu Kumar @ Piku

Opposite Party :- State of U.P.

Counsel for Applicant :- Prakash Chandra Srivastava, Anil Kumar Mishra

Counsel for Opposite Party :- G.A., Ram M. Kaushik

Hon'ble Shekhar Kumar Yadav, J.

1. Heard learned counsel for the applicant, learned AGA for the State and perused the record.

2. This second bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant seeking enlargement on bail during the trial in Case Crime No.318 of 2022, under Sections 147, 148, 149, 302, 323, 336, 506, 34 IPC, P.S. Cantt, District Prayagraj.

3. The first bail application of applicant was heard and disposed of vide order dated 12.12.2022.

4. It is contended that the applicant is innocent and has been falsely implicated in this case. It is contended that the applicant is in jail since 28.10.2022 and has no criminal history. It is next submitted that similarly placed co-accused Akesh Kumar @ Nanha and Vivek Kumar have been granted bail by this Court vide order dated 17.10.2023 passed in Criminal Misc. Bail Application Nos. 29534 of 2023 and 31582 of 2023 respectively, and the applicant is claiming parity with co accused Vivek Kumar, therefore, applicant is also entitled to be released on bail on the ground of parity.

5. It is further submitted that four prosecution witnesses of fact, namely first informant, the injured, independent eye witness and chance witness have been examined i.e. P.W.-1 to P.W.-4 and all the four prosecution witnesses have not supported the case of prosecution.

6. I have perused the bail order of co accused and find that the role assigned to the present applicant is almost similar to that of co accused person who has already been enlarged on bail by this court.

7. On the other hand, learned A.G.A. opposes the application for bail but could not dispute the aforesaid facts.

8. Upon hearing learned counsel for the parties, perusal of record and considering the complicity of accused, severity of punishment as well as totality of facts and circumstances, at this stage without commenting on the merits of the case, I find it a fit case for bail.

9. Let the applicant- Prishu Kumar @ Piku, who is involved in

aforementioned case crime be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions. Further, before issuing the release order, the sureties be verified.

(i) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the date 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 IPC.

(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., may be issued and if 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 IPC.

(iv) The applicant shall remain present, in person, before the Trial Court on dates fixed for (1) opening of the case, (2) framing of charge and (3) 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 Trial Court may make all possible efforts/endeavour and try to conclude the trial within a period of one year after the release of the applicant.

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

11. It is made clear that observations made in granting bail to the applicant shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

Order Date :- 4.12.2023
RavindraKSingh