

Court No. - 76

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 25477 of 2023

Applicant :- Waseem Ahmad

Opposite Party :- State of U.P.

Counsel for Applicant :- Pramod Kumar Srivastava, Subir Lal, Swetashwa Agarwal

Counsel for Opposite Party :- G.A., Dr. D.K. Tiwari, Mohit Singh, Pawnesh Tiwari, Saurabh Basu

Hon'ble Vikram D. Chauhan, J.

1. Learned A.G.A. for the State submits that instructions have been received and has no objection in case the bail application is heard on merits.

2. Heard learned counsel for the applicant, Sri Saurabh Basu, learned counsel for the informant, learned A.G.A. for the State and perused the record.

3. It is submitted by learned counsel for the applicant that the first information report was lodged on 4.10.2019 in respect of an offence that has occurred between 26.4.2016 to 16.8.2019. He submits that there is delay in lodging of first information report by the informant. No reason has been given in the first information report as to the cause of delay. It is further submitted that as per first information report, on 26.4.2016 a sum of Rs.60,00,000/- was transferred by the informant through R.T.G.S. in the bank account of applicant. According to first information report, the aforesaid amount was given as an assistance to the applicant by the informant in the business dealing. Both the parties were known to each other. It is submitted that as per first information report, it is alleged that the aforesaid amount was required to be returned and when the same was not returned within the time frame, informant had demanded the aforesaid amount, which was not repaid by the applicant and, thereafter, threatening was extended to the informant by the applicant and the informant was asked to forget about the amount advanced.

3-A. Learned counsel for the applicant submits that as per first information report, amount of Rs.60,00,000/- was transferred for assistance in the business of applicant. The underlying contract

between the parties was for facilitating in purchase of land to the informant through the applicant. It is submitted that applicant and informant were having business dealings and since both the parties were known to each other, there was no written contract. Contract was on oral basis and as per claim of the applicant, total contract was for a sum of Rs.1,59,00,000/-. It is submitted that complete amount was not paid by the informant and as a result of same, applicant has filed a Criminal Complaint being Complaint No.3511 of 2019. It is submitted that in the aforesaid case, summoning order was passed by the C.J.M., Mahoba on 6.4.2022. However, subsequently the aforesaid criminal complaint was dismissed for non prosecution on 28.7.2022. It is submitted that criminal complaint was filed on the ground that informant had not paid remaining amount of Rs.99,00,000/- under the contract, which has been narrated in the first information report. It is submitted that the amount was paid as a business transaction and subsequently, if the applicant has not returned the amount, then the same would not come within the criminal law. The matter is purely of civil nature. It is submitted that the case is triable by Magistrate and maximum punishment provided under the law is seven years. The criminal history of the applicant has been explained in paragraph no. 7 of the supplementary affidavit. Applicant is languishing in jail since 18.5.2023 and in case he is released on bail, he will not misuse the liberty of bail and will cooperate in the trial.

4. Learned counsel for the informant submits that as per first information report, the amount of Rs.60,00,000/- was transferred by way of R.T.G.S. on 26.4.2016 in the account of applicant. He submits that although in the first information report, it has been stated that the amount was paid as an assistance in the business of applicant, however, the underlying contract was for purchase of land through the applicant by the informant. It is submitted that the aforesaid underlying contract stands admitted by the applicant in paragraph 14 of the affidavit filed in support of bail application. It is submitted that after the amount was transferred, applicant was required to return the aforesaid amount. Instead of returning the aforesaid amount, applicant tried to delay the return of the amount and whenever the demand was raised by the informant, applicant assured the return of the amount. However, in the year 2019 applicant denied return the amount to informant and threatened the informant to forget the aforesaid amount.

4-A. Learned counsel for the informant, however, does not dispute the fact that applicant has previously filed a criminal complaint

against the informant in which the summoning order was issued. It is submitted that subsequently the aforesaid complaint of the applicant was dismissed for non prosecution.

5. On a pointed query being made to learned counsel for the informant as to what was the cheating at the time of initial transaction on 26.4.2016 when the amount was transferred, learned counsel for the informant submits that the amount was taken by the applicant, however, the same was not returned on the date when the amount was required to be returned.

6. By order dated 9.10.2023, learned counsel for the informant was granted time to bring on record the underlying agreement between the informant and the applicant with regard to transfer of Rs.60,00,000/-. Today, learned counsel for the informant has submitted that there was no written contract in respect of transfer of amount and the amount was transferred based on oral agreement between the parties, which the law recognizes as a contract. It is submitted that non return of the amount of Rs.60,00,000/- or ensuring the transfer of land in consideration of Rs.60,00,000/- has resulted in lodging of first information report.

7. Learned counsel for the informant submits that applicant is required to return the aforesaid amount of Rs.60,00,000/- or complete the contract by transfer of land in favour of the informant as was initial contract.

8. Learned A.G.A. for the State opposed the prayer for bail but does not dispute factual matrix of the case.

9. Learned AGA for the State has pointed out the criminal antecedents of the applicant. No material or circumstance has been brought to the notice of this Court with regard to tampering of evidence or intimidating of witness in previous criminal cases. In **Ash Mohammad Vs. Shiv Raj Singh, (2012) 9 SCC 446**, the Apex Court in para 30 has observed:-

"We may hasten to add that when we state that the accused is a history-sheeter we may not be understood to have said that a history-sheeter is never entitled to bail. But, it is a significant factor to be taken note of regard being had to the nature of crime in respect of which he has been booked."

10. In the case of **Prabhakar Tewari Vs. State of U.P. and another, 2020 (11) SCC 648**, the Hon'ble Supreme Court has observed that pendency of several criminal cases against an accused may itself cannot be a basis for refusal of bail.

11. In so far as criminal antecedents of the applicant is concerned, it is not the case of the State that applicant might tamper with or otherwise adversely influence the investigation, or that he might intimidate witnesses before or during the trial. The State has also not placed any material that applicant in past attempted to evade the process of law. If the accused is otherwise found to be entitled to bail, he cannot be denied bail only on the ground of criminal history, no exceptional circumstances on the basis of criminal antecedents have been shown to deny bail to accused, hence, the Court does not feel it proper to deny bail to the applicant just on the ground that he had criminal antecedent.

12. The principle that Bail is a rule and Jail is an exception has been well recognised by Apex Court more specifically on the touch stone of Article 21 of the Constitution. The said principle has been reiterated by the Apex Court in **Satyendra Kumar Antil Vs. Central Bureau of Investigation and another, 2022 (10) SCC 51**. Learned AGA has not shown any exceptional circumstances which would warrant denial of bail to the applicant.

13. No material, facts or circumstances has been shown by opposite parties that the accused may tamper with the evidence or witnesses or the accused is of such character that his mere presence at large would intimidate the witnesses or that accused will use his liberty to subvert justice or tamper with the evidence.

14. It is settled principle of law that the object of bail is to secure the attendance of the accused at the trial. No material particulars or circumstances suggestive of the applicant fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like have been shown by learned AGA for the State.

15. Opposite parties have not shown any material or circumstances that the accused/applicant is not entitled to bail in larger interests of the public or State.

16. It is to be seen that in the present case, first information report was lodged with the allegation of transfer of Rs.60,00,000/- on 26.4.2016 by way of R.T.G.S. in the account of applicant by the informant. Both counsel do not dispute the fact that the aforesaid amount was transferred on the ground of underlying contract between the parties for purchase of land through applicant in favour of the informant. Counsel for applicant and informant do not dispute the fact that there was no written contract when the amount was transferred on 26.4.2016 or at any subsequent date.

The amount was transferred on oral agreement between the parties. As per first information report, it has been stated that the amount of Rs.60,00,000/- has been transferred as an assistance in the business of the applicant by the informant.

17. Learned counsel for the informant has submitted that once the amount was transferred, applicant was required to return the same in a time bound manner, however, the aforesaid amount was not transferred as per schedule and as such, criminal proceedings were initiated.

18. Time schedule between the parties has not been placed before this Court when the amount was required to be returned. There was no written contract between the parties. It is not in dispute between the parties that at the initial stage, when the amount was transferred, the transaction was purely a business transaction. In case of failure on the part of the applicant in returning the amount, the same is civil dispute between the parties, for which, criminal proceedings may not be available.

19. It is further to be noted that the terms of contract between the parties are required to be proved before the competent court of civil court so that the liability of the applicant is decided. It is further to be noted that the applicant has set up a case that the total contract amount was a sum of Rs.1,59,00,000/- between the parties out of which only Rs.60,00,000/- has been paid and the remaining amount is being claimed by the applicant.

20. Considering that there is a dispute with regard to value of contract, the same has to be considered and adjudicated by the court of competent jurisdiction in civil jurisdiction. In the present case, there is no allegation with regard to the fact that at the initial stage when the amount was transferred there was any cheating by the applicant. At the initial stage, the transfer of amount was purely a business transaction, subsequent default with regard to payment or of any contract or any dishonour of contract terms then the applicant may not come within Section 420 IPC. Prima facie, the dispute seems to be of civil nature. Criminal history of the applicant has been explained in paragraph no.7 of the supplementary affidavit, which mostly are lodged after lodging of the present first information report. Applicant is languishing in jail since 18.5.2023. The Court is of the view that the applicant has made out a case for bail. The bail application is **allowed**.

21. Let the applicant **Waseem Ahmad** involved in Case Crime No.393 of 2019, under Sections 504, 506, 420, 406 IPC, Police

Station Manjhanpur, District Kaushambi be released on bail on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to the following conditions:-

- i. The applicant will not tamper with the evidence during the trial.
- ii. The applicant will not pressurize/intimidate the prosecution witness.
- iii. The applicant will appear before the trial court on the date fixed, unless personal presence is exempted and/or the applicant shall make himself available for interrogation by a police officer as and when required.
- iv. The applicant shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.
- v. The applicant shall not directly or indirectly make any 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 to any police officer or tamper with the evidence.
- vi. The applicant shall not leave India without the previous permission of the Court.
- vii. In the event, the applicant changes residential address, the applicant shall inform the court concerned about new residential address in writing.

22. In case of breach of any of the above condition, the prosecution shall be at liberty to move bail cancellation application before this Court.

23. It is made clear that the finding recorded or any observation made in the present order, shall not prejudice the trial court proceedings and the trial court shall proceed with the trial independently without relying on the observation made by this Court in the present bail application.

Order Date :- 13.10.2023

D. Tamang