

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 26269 of 2023

Applicant :- Saleem @ Sanny

Opposite Party :- State of U.P.

Counsel for Applicant :- Mohammad Zakir, Vivek Kumar Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Heard Sri Vivek Kumar Yadav, learned counsel for the applicant and Sri Brijesh Pratap Singh, learned AGA for the State-respondent.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 63 of 2022, under Sections 394, 411, 120-B IPC, Police Station- Kapurpur, District- Hapur, during pendency of the trial in the court below.

3. Learned counsel for the applicant submitted that this is the second bail application filed on behalf of the applicant and his first bail application was dismissed on merit by this Court on 02.02.2023 and he is pressing the instant second bail application on the ground that after rejection of the first bail application of the applicant, bail application co-accused Nadeem @ Deepak was allowed by co-ordinate Bench of this Court on 16.03.2023 and from his possession Rs. 9,300/- was recovered. He further submitted that even bail application of co-accused Mukaddam @ Irfan was allowed by Additional Sessions District Judge, concerned on 04.04.2023 and therefore, on the ground of parity, applicant should also be released on bail.

4. Per contra, learned AGA opposed the prayer for bail and submitted that from the possession of the applicant and co-accused more than Rs. 2 lacs were recovered, which were looted from the informant and after considering the entire facts of the case, first bail application of the applicant was dismissed.

5. He further submitted that apart from the present case, applicant is also having criminal history of five other cases and from the bail order of co-accused, it appears that from his possession only Rs. 9,300/- was recovered and he was not having any criminal history to his credit, therefore, applicant cannot claim parity and on the ground of parity of the order of learned Additional Sessions

District Judge, applicant should not be released on bail.

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

7. This is the second bail application filed on behalf of the applicant and his first bail application was dismissed on merit by this Court on 02.02.2023 with a detailed order and from its perusal, it appears that when applicant and co-accused Nadeem @ Deepak were arrested then from their possession total more than Rs. 2 lacs were recovered.

8. However, from the record, it reflects that after rejection of the first bail application of the applicant, co-accused Nadeem @ Deepak was released on bail by this Court on 16.03.2023 but from the perusal of his bail order, it appears that from his possession Rs. 9,300/- was recovered and further, applicant is also having criminal history of five cases while co-accused Nadeem @ Deepak was not having any criminal history to his credit.

9. However, from the record, it reflects that bail application of co-accused Mukaddam @ Irfan has been allowed by Additional District & Sessions Judge, Fast Track Court-Second, Hapur on 04.04.2023 i.e. even after rejection of the bail application of applicant by this Court but from the perusal of the bail order dated 04.04.2023 passed by the court concerned, it appears that co-accused Mukaddam @ Irfan granted bail on the ground that his name was surfaced through the statements of co-accused persons and his case was distinguishable from the case of other accused persons and, therefore, applicant cannot claim parity with co-accused Mukaddam @ Irfan.

10. Therefore, from the discussion made above, I do not find any new good ground on the basis of which, applicant should be released on bail.

11. Accordingly, without expressing any opinion on the merits of the case, the instant second bail application is **rejected**.

12. 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 :- 30.11.2023
KK Patel