

Court No. - 76

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 32880 of 2023

Applicant :- Shanu

Opposite Party :- State of U.P.

Counsel for Applicant :- Mukti Nath Dwivedi, Akhilesh Kumar Tiwari, Ankit Srivastava, Rabindra Tiwari, Surya Bhan Yadav

Counsel for Opposite Party :- G.A.

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, learned A.G.A. for the State and perused the record.
3. This bail application under section 439 Cr.P.C. has been moved to enlarge the applicant on bail in Case Crime No Case Crime No. 125 of 2023, under sections 379, 411 I.P.C., Police Station Kant, District Shahjahanpur.
4. It is submitted by learned counsel for the applicant that the F.I.R. has been lodged against unknown persons for theft of weight measures total 19 nug of 50 kg and 2 nug of 20 kg. Learned counsel for the applicant submits that subsequently recovery of the weight measures have been made from the joint possession of the accused persons, including, the applicant. Learned counsel submits that the applicant has been falsely implicated in the present case on account of previous criminal history. The criminal history of the applicant has been explained in paragraph no. 6 of the supplementary affidavit. Applicant is languishing in jail since 06.03.2023 and in case he is released on bail, he will not misuse the liberty of bail and will cooperate in the trial.
5. Learned A.G.A. for the State opposed the prayer for bail application and submits that incriminating article has been recovered from the applicant and the applicant has criminal history of 21 cases.
6. It is to be seen that in the present case the F.I.R. was lodged

against unknown persons, however, subsequently, the theft article has been recovered from the applicant. The only explanation offered by the applicant is that the applicant has been falsely implicated on account of previous criminal history. The applicant has criminal history of 21 cases which includes the case of theft.

7. A plea of false implication has been raised by the applicant. A plea of false implication is required to be specific and factual foundation of the same is required to be laid down by accused in the pleadings. In **Ruli Ram Vs. State of Haryana, (2002) 7 SCC 691**, it has been observed by the Supreme Court that when a plea of false implication is advanced by the accused, foundation for the same has to be established. Further, in **Ram Udgar Singh Vs. State of Bihar, (2004) 10 SCC 443**, the Apex Court has held that foundation has to be laid if a plea of false implication is made. Vague allegations with regard to plea of false implication raised by accused is not permissible under law. The plea of false implication cannot be on the basis of conjectures. In **Brahm Swaroop Vs. State of U.P., (2011) 6 SCC 288**, Supreme Court has observed that a party has to lay down a factual foundation and prove by leading impeccable evidence in respect of its false implication. In the present case vague and general allegations have been made with regard to plea of false implication. The foundational fact and material particulars are absent. Such plea of false implication is not tenable.

8. Considering the facts and circumstances of the case, nature of offence, evidence, complicity of the accused, submissions of learned counsel for the parties, the Court does not find it a fit case for bail.

9. The bail application lacks merit and is accordingly rejected.

Order Date :- 9.11.2023

K.K. Maurya