

Court No. - 72

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 30849 of 2023

Applicant :- Mahesh Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Ram Krishna Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. List has been revised. Rejoinder affidavit filed today by the learned counsel for the applicant is taken on record.
2. Heard learned counsel for the applicant and learned A.G.A. for the State and perused the record.
3. Applicant seeks bail in Case Crime No.2823 of 2018, under Sections 364, 411 I.P.C., Police Station- Sahibabad, District- Ghaziabad, during the pendency of trial.
4. First information report has been instituted against unknown person on 14.09.2018. Family members of informant, Sanjay Mishra, Sanjeev Pathak and Ritik had gone for their job on 12.09.2018 at about 11:00 a.m. and had not returned till 14.09.2018, as such F.I.R. was instituted.
5. Learned counsel for the applicant has stated that the applicant has been falsely implicated in the present case on the basis of recovery of one mobile techno golden colour bearing IMEI No. 911623306194106 and 911623306194108 which was identified by Amarnath Pathak father of Sanjeev Pathak. Learned counsel has further stated that except the said mobile, there is no other evidence against the applicant. Learned counsel has stated that two witnesses have been examined and PW-2 Amarnath Pathak has stated that he had identified the mobile of his son which was recovered from the possession of the applicant during his examination-in-chief recorded on 31.05.2022. Learned counsel has further stated that said statement categorically indicates that he does not whereabouts of his son, he also does not know whether he is live or not. PW-1 has also reiterated the same allegations. Learned counsel has stated that two witnesses of fact could be examined till 31.05.2022 and subsequent to it one and a half year

have passed and no witness has turned up. There is no cogent evidence against the applicant except the said mobile. Learned counsel has stated that at the mandate of Article 21 of the Constitution of India stands violated and applicant is languishing in jail since 29.10.2018, as such five years have passed. Learned counsel has placed reliance in the judgement passed by the Apex Court in the case of ***Union of India vs. K.A. Najeeb AIR 2021 SUPREME COURT 712*** it has been held as follows:-

"We are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent's prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail.

6. Several other submissions have been made on behalf of the applicant to demonstrate the falsity of the allegations made against him. The circumstances which, as per counsel, led to the false implication of the applicant have also been touched upon at length. There is no criminal history of the applicant. In case, the applicant is released on bail, he will not misuse the liberty of bail.

7. Per contra, learned A.G.A. has vehemently opposed the bail application but unable to dispute the submissions raised by the learned counsel for the applicant and also the fact that the applicant has no criminal history.

8. Considering the mandate in the case of ***Satender Kumar Antil vs. Central Bureau of Investigation and another***, reported in ***2021 SCC Online SC 922*** and since the applicant has undergone incarceration for more than 5 years and conclusion of trial will take still some time, it appears to us that the applicant deserves to be enlarged on bail at this stage. In the facts and circumstances of the case, submissions made by learned counsel for the parties, the evidence on record, pending trial and considering the complicity of accused, severity of punishment, at this stage, without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is **allowed**.

9. Let the applicant- **Mahesh Kumar** involved in aforementioned case crime number be released on bail on furnishing a personal bond and two heavy sureties each in the like amount to the

satisfaction of the court concerned subject to 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.
- iv. The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.
- 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.

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

11. Identity, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

12. 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 on the testimony of the witnesses.

(Justice Krishan Pahal)

Order Date :- 27.10.2023

Sharad/-