

Court No. - 93

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 31546 of 2023

Applicant :- Riyaj Khan

Opposite Party :- State of U.P.

Counsel for Applicant :- Rajendra Singh, Sarvagya Singh, Shiv Bahadur Singh

Counsel for Opposite Party :- G.A., Anjani Kumar

Hon'ble Arun Kumar Singh Deshwal, J.

Heard Dr. Shiv Bahadur Singh, learned counsel for the applicant, Sri Rajeev Kr. Singh, learned A.G.A. for the State and perused the record.

Instant bail application has been filed with a prayer to release the applicant on bail during the trial in Case Crime No. 06 of 2023, under Sections 147, 420, 467, 468, 471, 411, 120-B IPC and Sections 66, 66C, 66D I.T. Act, Police Station- Cyber Crime, District Varanasi.

Contention of learned counsel for the applicant is that there is no evidence which shows that a cheque given by first informant was deposited in the account which was in any way related to the applicant. It is also submitted that the recovery of some cheques, credit cards and stamp of e-service taxi was jointly recovered from all the accused persons including the applicant. It is also submitted that at the time of recovery of the aforesaid stamp of e-service taxi, the applicant was not accused in case diary, therefore, in view of law laid down by the Apex Court in the case of ***Rajesh and another vs State of M.P. in Criminal Appeal No. 793-794 of 2022*** decided on 21st September, 2023 that recovery would not fall under Section 27 of the Evidence Act and even otherwise there was no private witness of the alleged recovery. He further contended that though FIR was lodged on 06.04.2023 and more than 90 days expired but till date charge sheet has not been filed. The applicant is a law abiding citizen and he is languishing in jail since 21.05.2023. It is further submitted that the applicant has no criminal history. In case, he is granted bail, he will not misuse the liberty of bail and would cooperate in the trial proceedings.

Per contra, learned A.G.A. submits that 16 cheques, 10 ipad, 10 ATM cards and stamp of e-service taxi were recovered from the possession of the accused persons including the applicant and

Parcha no.2 (C.D.) clearly shows that Google account of the applicant is connected with the applicant in which the alleged cheques were deposited.

After hearing the learned counsel for the parties and perusal of record, it appears that though recovery of Mobiles, 18 cards and stamp of e-service were shown to be recovered from joint possession of the accused persons including the applicant but there was no public witness of the aforesaid recovery. Even otherwise in law laid down by the Apex Court in **Rajesh and another (Supra)** the aforesaid recovery made at the pointing out by accused persons will not fall under Section 27 of the Evidence Act as at the time of aforesaid recovery, the applicant was not accused. From perusal of record, the Court does not find any evidence which connect the Google account of the applicant with the account of e-service of taxi.

Thus, considering the entire facts and circumstances of the case, submissions of learned counsel for the parties and keeping in view the nature of offence, evidence, complicity of accused and without expressing any opinion on the merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

Let the applicant- **Riyaj Khan** involved in the aforementioned 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, with the following conditions:-

1. The applicant shall not tamper with the prosecution evidence by intimidating/ pressurizing the witnesses, during the investigation or trial.
2. The applicant shall cooperate in the trial sincerely without seeking any adjournment.
3. The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

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

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

Order Date :- 13.10.2023

Vandana