Court No. - 77

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 32310 of 2023

Applicant :- Vijay Kumar
Opposite Party :- State of U.P.
Counsel for Applicant :- Balbeer Singh,Monika Pal
Counsel for Opposite Party :- G.A.

Hon'ble Mrs. Renu Agarwal,J.

1. Counter affidavit filed on behalf of State in the Court today is taken on record.

2. Heard learned counsel for the applicant, learned A.G.A. and perused the record.

3. The present first bail application has been filed on behalf of the applicant in Case Crime No. 46 of 2023, under Sections 419, 420, 467, 468, 471 I.P.C. and section 6/10 U.P. Public Examination (Prevention of Unfair Means) Act, 1998, P.S. Nai Ki Mandi, district-Agra with the prayer to enlarge him on bail.

4. Learned counsel for the accused-applicant submitted that the applicant is innocent and has been falsely implicated in the instant case due to malafide intentions. Neither the applicant was present in the examination hall nor he was arrested from the spot. He has nothing to do with this crime. The case is triable by Magistrate. It is next contended that similarly situated co-accused persons namely, Pushpendra Kumar, Pawan Kumar and Udai Narayan Shah have already been enlarged on bail by coordinate Benches of this Court vide orders dated 7.8.2023, 18.8.2023 and 24.8.2023 passed in Criminal Misc. Bail Application Nos. 33341 of 2023, 33362 of 2023 and 35959 of 2023. Copy of the bail orders produced by learned counsel for the applicant is taken on record.

The applicant is languishing in jail since 28.6.2023, having no criminal history. It is lastly submitted that since the role of the present applicant is identical to that of co-accused, who has already been enlarged on bail, present applicant is also entitled to be enlarged on bail on the ground of parity and if he is granted the liberty of bail he will not misuse the same and he is ready to furnish his sufficient sureties, bonds and personal bonds.

4. On the other hand, learned AGA has vehemently opposed the prayer for bail but could not controvert the fact that identically situated co-accused has been enlarged on bail.

5. Considering the fact that neither the applicant was present in the examination hall nor he was arrested from the spot, applicant is is not a previous convict, identically situated co-accused have been enlarged on bail and without expressing any opinion on the merits of the case, accused-applicant is liable to be released on bail.

6. Let applicant **Vijay Kumar** be released on bail in the above case crime number and on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of Court concerned with the following conditions :-

(i) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(ii) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed

against him under Section 229-A of the Indian Penal Code.

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the court on the date fixed in such proclamation, then the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

(iv) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

(v) The applicant shall also furnish an undertaking from the sureties that the properties (movable/immovable) which are the basis of accepting the surety, shall not be disposed of by them till the conclusion of trial.

(vi) The applicant shall also give an undertaking to the effect that he will not change his address without prior intimation to the trial court concerned.

(Renu Agarwal,J.)

Order Date :- 16.10.2023
Faridul

Digitally signed by :-
FAREEDUL HASAN
High Court of Judicature at Allahabad