

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 32898 of 2023

Applicant :- Devesh @ Bhola

Opposite Party :- State of U.P.

Counsel for Applicant :- Kuldip Singh Yadav

Counsel for Opposite Party :- G.A.,Dhananjay Singh
Yadav,Krishna Kumar Patel,Virat Pratap Singh

Hon'ble Sameer Jain,J.

1. Heard Sri Kuldip Singh Yadav, learned counsel for the applicant; Sri Virat Pratap Singh, learned counsel for the informant and Dr. S. B. Maurya, learned AGA-I for the State-respondent.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 256 of 2022, under Sections 147, 148, 149, 307, 323, 324, 452, 506 IPC, Police Station Linepar, District Firozabad, during pendency of the trial in the court below.

3. Learned counsel for the applicant submits, this is the second bail application filed on behalf of the applicant. The first bail application of the applicant has been dismissed on merit by this Court 22.2.2023 and he is pressing the instant second bail application on the ground that applicant is in jail in the present matter for almost 11 months and till date, even charges could not be framed against him.

4. He further submitted that in the present matter alongwith applicant there are other accused persons also and role of all the accused persons are same and on the basis of general allegation, applicant has been made accused in the present matter but first bail application of the applicant was dismissed on the ground that he was having criminal history of six other cases and he was having very small period of incarceration at the time of his first bail application but now applicant has remained in jail for almost 11 months and entire criminal history of the applicant has already been explained.

5. He further submitted that although apart from the criminal history of the present case, applicant is having criminal of the two other cases of section 307 IPC and criminal history of one case of section 302 IPC but in all the cases he is in bail and only due to

previous criminal history, he has made accused in the present case.

6. He further submitted that merely on the basis of criminal history bail application of the applicant should not be dismissed, therefore, applicant should be enlarged on bail.

7. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that this is the second bail application of the applicant and after considering the criminal history of the applicant, first bail application of the applicant was dismissed and therefore, considering the criminal history of applicant, he should not be released on bail.

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

9. This is the second bail application filed on behalf of the applicant. The first bail application of the applicant has been dismissed on merit by this Court 22.2.2023 and from perusal of the order dated 22.2.2023 it reflects that on the ground that applicant is having criminal history to his credit and as due to the small period of incarceration his first bail application was dismissed but now applicant is in jail in the present matter since 5.12.2022 i.e. for more than 11 months and as far as criminal history of the applicant is concerned it has been explained alongwith the first bail application and it appears that in all the previous cases, applicant was on bail.

10. As far as merit of the case is concerned on the basis of general allegation, applicant has been made accused in the present matter alongwith other accused in the present case and all the other accused persons have already been released on bail and on merit, case of applicant is at par with them.

11. Therefore, considering the facts and circumstances of the case, discussed above, particularly the incarceration of the applicant of more than 11 months, in my view, applicant is entitled to be released on bail.

12. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is **allowed**.

13. Let the applicant-**Devesh @ Bhola**, be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicant shall appear before the trial court on the dates fixed, unless his personal presence is exempted.

(ii) The applicant shall not directly or indirectly, make 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 any police officer or tamper with the evidence.

(iii) The applicant shall not indulge in any criminal and anti-social activity.

14. In case of breach of any of the above condition, the prosecution will be at liberty to move an application before this Court for cancellation of the bail of the applicant.

15. 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 :- 9.11.2023

Ankita