

Court No. - 77

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 32817 of 2023

Applicant :- Aman Dubey

Opposite Party :- State of U.P.

Counsel for Applicant :- Sunil Kumar Singh

Counsel for Opposite Party :- G.A., Tufail Hasan

Hon'ble Mrs. Renu Agarwal, J.

1. Supplementary affidavit filed today is taken on record.
2. Heard learned counsel for the applicant, learned counsel for the informant, learned A.G.A. for the State and perused the record.
3. The present first bail application has been filed on behalf of the applicant in Case Crime No. 291 of 2023 under Sections 394, 411 I.P.C. Police Station Dakshin, District Firozabad 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. Allegations as per the F.I.R. is that Rs. 12,50,000/- in cash along with two mobile phones were stolen by three unknown thief from the Almirah of the informant. It is submitted that accused-applicant is not named in the F.I.R. and his name surfaced on the basis of confessional statement of co-accused-Shivam who was identified on the basis of CCTV footage. It is further submitted that there is no public witness of the alleged recovery. It is next submitted that there is no identification of the present applicant has been taken place. It is contended that after the applicant was arrested in the instant case, he was falsely implicated in two

other cases in which he has not yet moved bail application. It is next contended that applicant is a businessman and runs a business of selling and purchasing buffaloes and cows. Applicant is languishing in jail since 10.05.2023 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 and shall co-operate in the trial.

5. On the other hand, learned counsel for the informant and learned AGA for the State has opposed the prayer of bail and submitted that one stolen ring has been recovered from the possession of the applicant which is not explained by the applicant and criminal history of one more case under Section 307 I.P.C. is pending in which he has not yet moved bail application and name of the applicant surfaced on the basis of confessional statement of co-accused Shivam who was identified on the basis of CCTV footage, hence if the applicant is granted the liberty of bail, he may repeat the crime.

6. Considering the fact that the applicant was not named in the F.I.R., applicant has no prior criminal history of like nature, his name surfaced on the basis of confessional statement of the co-accused Shivam, there is no public witness of the alleged recovery, no identification parade is conducted to identify the recovered ring, case is triable by Magistrate and without expressing any opinion on the merits of the case, accused-applicant is liable to be released on bail. **However, since co-accused, Shivam is identified on the basis of CCTV footage, hence the case of the present applicant is distinguished from that of co-accused Shivam.**

7. Let applicant **Aman Dubey** 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

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