

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 51044 of 2021

Applicant :- Arif .And Another

Opposite Party :- State of U.P.

Counsel for Applicant :- Sonia Saraswat,Ajay Kumar Vashistha,Pankaj Kumar Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma,J.

1. Rejoinder affidavit to the counter affidavit filed by the learned A.G.A. for the State is taken on record.

2. Heard counsel for the applicants and learned A.G.A. for the State-opposite party.

3. The instant bail application under Section 439 Cr.P.C. has been filed with the prayer to enlarge the applicants on bail in Case Crime No. 640 of 2019 under Sections 395, 397 and 412 I.P.C., Police Station- Highway, District- Mathura, during the pendency of the trial.

4. Counsel for the applicants contends that the applicants were not named in the first information report and have been falsely implicated in the present case. The name of the applicants was disclosed by the co-accused, Nazim in Police custody. The said statement, insofar as, it implicates the applicants is unreliable. No test identification parade was got conducted by the Police authorities. False recovery of ornaments of yellow and white metals has been shown from the applicants. There is no independent witness to the alleged recovery. The said recovery cannot be connected with the offence. It is next contended that identically placed co-accused, Amir, Haroon and Salman, have been granted bail by the Court in Criminal Misc. Bail Application Nos. 26249 of 2022, 47617 of 2020 and 51139 of 2021 vide orders dated 25.07.2022, 03.08.2022 and 06.01.2023. The applicants claim parity. The criminal history of the applicants has been explained in para no. 5 of the rejoinder affidavit. The applicants are in jail since 30.10.2019. In case they are enlarged on bail, they will not misuse the said liberty.

5. Learned A.G.A. has opposed the prayer for bail but could not satisfactorily dispute the aforesaid submissions from the record.

6. Having heard counsel for the parties and having perused the record this Court prima facie finds that the applicants were not named in the first information report. The identically placed co-accused, Amir, Haroon and Salman, have been granted bail by this Court. Further the applicants have remained confined for almost four years and after submission of the charge-sheet there is no hope of early conclusion of trial, more so when no reasonable apprehension has been brought to the fore by the State that the applicants, if enlarged on bail, would either tamper with the evidence or delay the trial or intimidate the witness, without commenting on merits of the case, I am of the opinion that the applicants are entitled to be enlarged on bail.

6. Let the applicants- **Arif and Nazim**, involved in aforesaid case be released on bail on their furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to the conditions that they:

- (i) shall appear on the date fixed by the trial court;
- (ii) shall not tamper with the prosecution evidence;
- (iii) shall not pressurize the prosecution witnesses.

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

Order Date :- 12.10.2023
Sachin Mishra