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Delivered on 12.10.2023

Neutral Citation No. - 2023:AHC:197042

Court No. - 78

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 36640 of 2023

Applicant :- Brijbhawan Das Gujrati

Opposite Party :- State of U.P.

Counsel for Applicant :- Nanhe Lal Tripathi, Saurabh Pandey, Shivam Kumar Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Raj Beer Singh, J.

1. Heard Sri Saurabh Pandey, learned counsel for the applicant-accused and learned A.G.A. for the State.
2. The present bail application has been filed by the applicant-accused in Case Crime No. 213 of 2014, under Sections 409, 419, 420, 467, 468, 471, 120-B IPC and Section 13(2) Prevention of Corruption Act, P.S. Chetganj, District Varanasi with the prayer to enlarge the applicant on bail.
3. According to prosecution version, from the financial year 2000-2001 to 2009-2010, the Government has provided a grant of Rs.10,20,22,000/- to Sampurnanand Sanskrit Vishvavidhalaya, Varanasi for printing/publication and binding work of rare manuscripts and scriptures but out of that funds, the payment of Rs.5,68,23,642/- was made to various publishers / press concerns and book binders, without any printing or publication of any manuscripts or without any binding work. As per prosecution version, the applicant was working as personal secretary to the Vice Chancellor of the said University and he along with co-accused persons was also involved in siphoning of the said public

funds.

4. It has been argued by learned counsel for the applicant-accused that the applicant-accused is innocent and he has been falsely implicated in this case. There is long and undue delay in lodging of the first information report. The applicant was working as personal secretary to the Vice Chancellor and he was performing work related to casual leaves and confidential documents only and he has not received any file pertaining to any payment or financial matter pertaining to publication department. The alleged forged stamp was not recovered from possession of applicant. As per procedure, the files sent by any department to the Vice Chancellor, have to be entered into the peon book and the applicant has to pass over the files to another table. The applicant did not receive a single file pertaining to the matter in dispute regarding payment to any publisher. It is further submitted that on the basis of alleged forged seal, the amount has been withdrawn by the finance department on 19.05.2009, 15.06.2009, 26.06.2009, 04.07.2009, 22.07.2009 and the applicant was falsely implicated regarding alleged payments. Not a single file regarding alleged five payments, which were approved by using forged seal of the signature of Vice Chancellor, has been received or dealt with by the applicant. There is no evidence regarding any embezzlement of any amount by the applicant. Similarly, there is no evidence that applicant has committed any forgery. In fact the publication department and financial department have dealt with the entire matter and applicant was unaware of the entire episode. No forged stamp has been recovered from the applicant. The statement of one Harendra Kumar and some other witnesses were referred and it was submitted that there is no credible evidence against applicant and that no case is made out against applicant. It is further

submitted that a departmental enquiry was conducted by Dr. Padmakar Mishra of Sampurnanand Sanskrit Vishvavidhalaya, wherein, the enquiry officer has found that applicant cannot be held responsible merely on the basis that he used to keep files in the office of Vice Chancellor or to put up the files before the Vice Chancellor. Referring to case of Ashoo Surendranath Tewari vs. The Deputy Superintendent of Police, EOW, CBI and Ors., (Criminal Appeal No.575 of 2020), decided on 08.09.2020, it was submitted that once the applicant has been exonerated during in departmental enquiry, he cannot be prosecuted in criminal proceedings. It was submitted that co-accused persons, namely, Satish Kumar Patel, Ravi Prakash Pandya, Diwakar Tripathi and Ramesh Kumar Patel have already been enlarged on bail by co-ordinate Benches of this Court, the copies of orders of which, are available on record. Lastly, it has been submitted that the applicant-accused is languishing in jail since 19.07.2023, having no criminal history, and that in case the applicant-accused is released on bail, he will not misuse the liberty of bail and will co-operate in trial.

5. Learned A.G.A. has opposed the bail application and submitted that there are serious allegations against the applicant. At the relevant time, the applicant was working as personal secretary to the Vice Chancellor of the said University. The University was provided a grant of Rs.10,20,22,000/- for printing/publication and binding work of rare manuscripts and out of that grant, payment, of Rs.5,68,23,642/- was made to various printing press concern/publishers/book binders without any printing or publication work or binding work. It was submitted that the proposals of payment submitted to the office of Vice Chancellor were to be dealt with by the applicant and he used to put the said

proposals before the Vice Chancellor for approval but in respect of five such proposals of payments, it was revealed that the forged seal of signature of Vice Chancellor was used and thereby huge amount of the above stated grant was diverted and misused and payments were made without any printing or publication or binding work. The case of applicant is distinguished from the case of co-accused persons, who have been granted regular bail.

6. I have considered rival submissions and perused the record.

7. Perusal of record shows that out of the grant of Rs.10,20,22,000/- provided to the said university, the funds to the tune of Rs.5,68,23,642/- diverted and siphoned off by showing payments to various publishers / press concerns and book binders, without any printing or publication or binding work. The applicant was working as personal secretary to the Vice Chancellor of the said University. One forged seal containing signature of the Vice Chancellor was recovered from the office of the applicant, however, it was alleged that the said seal was recovered from table of another employee. As per prosecution version, said seal was used in approval of five proposal of payments. Earlier, the anticipatory bail application of the applicant was rejected by this court but it is shown that now the applicant is in jail since 19.07.2023 and he is no more required in investigation and that nothing incriminating has been recovered from the applicant. The investigation in respect of applicant might have been completed by now. Besides the applicant, several other officials working the University were also shown involved in the matter. The applicant is stated a senior citizen and he has already retired from the University and that there is no possibility of tempering with evidence. The trial of the case would take sufficiently long time. In view of these facts and circumstances, it would be just and proper

to grant bail to the applicant.

8. Considering the submissions of learned counsel for the parties, nature of accusations, period of custody and all attending facts and circumstances of the case, without expressing any opinion on the merits of the case, the Court is of the view that a case for bail is made out. Hence, the bail application is hereby **allowed**.

9. Let the applicant-accused **Brijbhawan Das Gujrati** involved in aforesaid crime be released on bail on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions:

(i) The applicant-accused shall not tamper with the evidence during the trial.

(ii) The applicant-accused shall not pressurize/ intimidate the prosecution witness.

(iii) The applicant-accused shall appear before the trial court on the date fixed, unless personal presence is exempted.

(iv) The applicant-accused shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.

(v) The applicant-accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or to any police officer or tamper with the evidence.

10. In case of breach of any of the above condition, the Court concerned shall be at liberty to cancel bail of applicant-accused in accordance with law.

Order Date :- 12.10.2023

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