

Court No. - 75

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 37395 of 2023

Applicant :- Mahesh Nishad

Opposite Party :- State of U.P.

Counsel for Applicant :- Yogendra Kumar

Counsel for Opposite Party :- G.A

Hon'ble Umesh Chandra Sharma,J.

1. Heard learned counsel for the applicant, learned AGA and perused the record.
2. The FIR in question was lodged on the basis of a search, which was carried out on the information that some persons are planning to commit loot in the bank. Upon such information a search was carried out by the police. Several persons, including present applicant was arrested and from their possession certain ATM cards and Rs. 4500/- were allegedly recovered.
3. Learned counsel for the applicant submits that applicant has not committed any offence but the police only to increase the gravity of offence implicated the applicant in the present case. No incriminating article or material has been recovered either from the applicant or on his pointing out. He next submits that confessional statement of the applicant was also recorded. The search was not carried out in the presence of independent witness, which is contrary to the mandate of Section 100 Cr.P.C. It is further contended that similarly placed co-accused person has already been enlarged on bail by coordinate Benches of this Court *vide* order dated 01.11.2023 passed in Criminal Misc. Bail Application No.42527 of 2023 (Harishchandra Vs. State of UP), It is further

submitted that applicant has no criminal antecedent except the present one and he is in jail since 15.6.2023, is entitled to be enlarged on bail during pendency of the trial.

4. Learned AGA has opposed the bail application.

5. Considering the statement made at the Bar, *prima-facie* from the perusal of the FIR, apart from the recovery of Rs. 4500/- and ATM cards, the implication of the applicant is based only upon his confessional statement, considering that the recovery is also contrary to the mandate of section 100 Cr.P.C. the applicant is entitled to be enlarged on bail on the ground of parity. In view thereof, the application is allowed.

6. Let the applicant Mahesh Nishad be released on bail in Case Crime No. 207 of 2023, under Sections 419, 420, 467, 468, 471 I.P.C. and section 65/66 I.T. Act, P.S. Kurara, district-Hamirpur, on his furnishing a personal bond with two sureties of Rs.25,000/- each to the satisfaction of court concerned with the following conditions:

(a) The applicant shall execute a bond to undertake to attend the hearings;

(b) The applicant shall not commit any offence similar to the offence of which he is accused or suspected of the commission; and

(c) The applicant 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 him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

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 :- 24.11.2023

Vijay