Court No. - 76

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 37498 of 2023

Applicant :- Markandey Tiwari
Opposite Party :- State of U.P.
Counsel for Applicant :- Ajay Kumar Mishra,Santosh Kumar Pandey
Counsel for Opposite Party :- G.A.,Vinay Kumar Mishra

Hon'ble Vikram D. Chauhan,J.

1. Learned A.G.A. for the State submits that instructions have been received and has no objection in case the bail application is heard on merits.

2. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.

3. It is submitted by learned counsel for the applicant that applicant is a bona fide purchaser of the land in question. As per prosecution case, earlier the aforesaid land was sold by the co-accused to the informant, however, subsequently, the sale-deed has been executed in favour of the applicant. Co-accused-Balak Sahani, who is seller of the land in question, has already been enlarged on bail by the court below. The applicant has no previous criminal history. Applicant is languishing in jail since 28.07.2023 and in case he is released on bail, he will not misuse the liberty of bail and will cooperate in the trial.

4. Learned counsel for the informant Sri Vikas Yadav holding brief of Sri Vinay Kumar Mishra, advocate does not dispute the fact that the applicant is a purchaser of the property and the seller of the property has already been enlarged on bail.

5. Learned A.G.A. for the State opposed the prayer for bail but does not dispute factual matrix of the case.

5-A. Learned AGA for the State has not brought any fact or circumstances to indicate criminal history or antecedents of the applicant which would disentitle the applicant for Bail.

6. It is not the case of the State that the applicant has not

cooperated in the investigation or proceedings before the trial court.

7. The principle that Bail is a rule and Jail is an exception has been well recognised by Apex Court more specifically on the touch stone of Article 21 of the Constitution. The said principle has been reiterated by the Apex Court in **Satyendra Kumar Antil Vs. Central Bureau of Investigation and another, 2022 (10) SCC 51**. Learned AGA for the State has not shown any exceptional circumstances which would warrant denial of bail to the applicant.

8. No material, facts or circumstances has been shown by learned AGA for the State that the accused may tamper with the evidence or witnesses or the accused is of such character that his mere presence at large would intimidate the witnesses or that accused will use his liberty to subvert justice or tamper with the evidence.

9. It is settled principle of law that the object of bail is to secure the attendance of the accused at the trial. No material particulars or circumstances suggestive of the applicant fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like have been shown by learned AGA for the State.

10. Learned AGA for the State has not shown any material or circumstances that the accused/applicant is not entitled to bail in larger interests of the public or State.

11. Considering the facts and circumstances of the case, nature of offence, evidence, complicity of the accused, submissions of learned counsel for the parties and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.

12. Let the applicant **Markandey Tiwari** involved in Case Crime No. 244 of 2021, under Sections 107, 419, 420, 467, 468, 471, 120B IPC , Police Station Gola, District Gorakhpur, 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 the following conditions:-

i. The applicant will not tamper with the evidence during the trial.

ii. The applicant will not pressurize/intimidate the prosecution witness.

iii. The applicant will appear before the trial court on the date fixed, unless personal presence is exempted and/or the applicant shall make himself available for interrogation by a police officer as and when required.

iv. The applicant 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 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.

vi. The applicant shall not leave India without the previous permission of the Court.

vii. In the event, the applicant changes residential address, the applicant shall inform the court concerned about new residential address in writing.

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

Order Date :- 16.11.2023
S.Prakash

Digitally signed by :-
SHASHI PRAKASH
High Court of Judicature at Allahabad