

Court No. - 73

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 38074 of 2023

Applicant :- Sarvesh @ Sunil Kori

Opposite Party :- State of U.P.

Counsel for Applicant :- Akash Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

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

2. In this matter, it appears that F.I.R. was lodged against unknown person for the offence under Section 379 IPC by the informant Kuldeep Kumar for theft of his motorcycle. Name of the applicant came into light during course of investigation in the statement of co-accused.

3. It is submitted by learned counsel for the applicant that the applicant is innocent and has been falsely implicated in the present case. He has not committed any offence. Alleged offences are not made out against the applicant. The allegations made in the FIR are false. It is further submitted that the FIR of this case has been lodged against unknown accused persons regarding the theft of motorcycle of the informant. It is further submitted that during course of investigation when co-accused Imram s/o Sami Ullah and Anis @ Titu s/o Irshad were held by the police, the theft article was recovered from their possession and on the basis of their confessional statement made in the police custody the name of present applicant along with the three other co-accused persons came on surface. It is further submitted that the said Imran and Anis @ Titu have been granted regular bail from the Sessions Court itself. It is further submitted that co-accused Kamal has been granted anticipatory bail by this Court in Cr. Misc. Anticipatory Bail Application U/S 438 CR.P.C. No. - 3931 of 2023 by order dated 10.05.2023. It is further submitted that although criminal history of the present accused applicant has been pointed out by the learned State counsel but in the affidavit itself, the criminal history has been well explained. It is further submitted that the accused is languishing in jail since 26.6.2023 and he is entitled for regular bail and in case he is released on bail, he will

not misuse the liberty of bail and will cooperate in trial.

4. On the other hand, learned AGA opposed the prayer for bail but however could not dispute this factual matrix that the applicant is not named in the FIR. No incriminating article has been recovered from his possession or on his pointing out.

5. Grounds for bail are sufficient. Hence, keeping in view the nature of the offence, evidence, complicity of the accused, severity of punishment, submissions of the learned counsel for the parties, the dictum of Apex Court in the case of ***Dataram Singh vs. State of U.P. and another, (2018) 3 SCC 22***, 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.

6. Let the applicant **Sarvesh @ Sunil Kori** involved in Case Crime No. 409 of 2022, under Sections 379, 411, 413, 414, 420, 467, 468, 471, 34 IPC and Sections 15 of Dacoity Affected Area Act, P.S.- Hariparwat, District- Agra be released on bail on furnishing a personal bond and two heavy sureties each in the like amount to the satisfaction of the court concerned subject to following conditions. Further, before issuing the release order, the sureties be verified.

- 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.
- 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.

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.

8. Submissions and observations made in this order are only for deciding the bail application. The trial Court while deciding the trial will not be influenced with the same.

Order Date :- 16.11.2023

Fhd