

Court No. - 75

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 38940 of 2023

Applicant :- Durgpal

Opposite Party :- State Of U.P. And Another

Counsel for Applicant :- Ashish Dwivedi

Counsel for Opposite Party :- G.A.

Hon'ble Umesh Chandra Sharma,J.

1. Heard Sri Ashish Dwivedi, learned counsel for the applicant who has filed supplementary affidavit which is taken on record, learned AGA for the State and perused the record.

2. The instant bail application, under Section 439 CrPC of the Code of Criminal Procedure, 1973, has been filed with a prayer to enlarge the applicant on bail in Complaint Case No.11405 of 2021, Case Crime No.0519 of 2022, under Sections 420, 467, 468, 471, 120B IPC, Police Station Bilsi, District Budaun, during the pendency of trial.

3. Learned counsel for the applicant submitted that the applicant is innocent and has been falsely implicated in the present case. The applicant is illiterate person and facing problem with eye vision, He is a farmer and has no criminal history to his credit except the present case.

4. From perusal of the records, it has been transpired that the land in question was situated at Kheda Purvi, Tehsil and Police Station Bilsi, District Budaun. The informant is also resident of same village, but one Durga Prasad resident of village Barategdar, Budaun was owner of the property in question, who used to live in Haryana and died in the year 1991 and after his death by way of inheritance as registered will deed, his heirs have become the real owner of the property in question. The applicant - Durgpal, showing himself to be Durga Prasad, the real owner of the alleged property sold the same for a sum of Rs.1,20,000/- (rupees one lakh and twenty thousand).

5. From the above, it is very much clear that a fraud has been played by the applicant but no duty imposed under Section 55 of the Transfer of Property Act which is known as caveat emptor has been performed by the informant.

6. Today, the learned counsel for the applicant has filed

supplementary affidavit in which it has been averred that the applicant has paralyzed and he has been referred for his treatment to the Government Medical College, Budaun. The applicant has not played big fraud. The case is triable by the learned Magistrate, hence the case is liable to be allowed. Learned counsel for the applicants has lastly contended that the applicant is in jail since 26.06.2023. In case, he is enlarged on bail, he will not misuse the said liberty.

7. Learned AGA has opposed the prayer for bail but could not satisfactorily dispute the aforesaid submissions from the record.

8. Having regard to the facts, circumstances and the submissions made but without commenting on merits of the case, this Court is of opinion that the applicant is entitled to be enlarged on bail. Accordingly, the bail application is allowed.

9. Let the applicant - **Durgpal**, involved in the aforesaid case crime be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to the conditions that he:

(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.

10. 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 :- 9.11.2023

Shahroz