

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 39213 of 2023

Applicant :- Amir

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Gayyoor Ali,Rajiv Sisodia

Counsel for Opposite Party :- G.A.,Noor Ahmed

Connected with

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11919 of 2023

Applicant :- Avesh

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Swetashwa Agarwal,Bebi Naz,Irfan Chaudhary,Suhel Ahmad,Ved Prakash Singh

Counsel for Opposite Party :- G.A.,Noor Ahmed

With

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 38807 of 2023

Applicant :- Adil

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Gayyoor Ali,Rajiv Sisodia

Counsel for Opposite Party :- G.A.,Noor Ahmed

Hon'ble Rajeev Misra,J.

Heard Mr. Rajiv Sisodia the learned counsel for applicants- Amir and Adil, Mr. Suhel Ahmad, the learned counsel for applicant-Avesh, the learned A.G.A. for State and Mr. Noor Ahmed, the learned counsel for first informant.

These applications for bail have been filed by applicants- Amir, Adil and Suhel Ahmad, seeking their enlargement on bail in Case Crime No. 638 of 2022, under sections 363, 376-DA IPC and Section 5K/6 POCSO Act, Police Station- Kairana, District-Shamli during the pendency of trial.

Record shows that in respect of an incident which is alleged to have occurred on 15.11.2022, a belated F.I.R. dated 17.11.2022 was lodged by first informant Yakub, which was registered as Case Crime No. 638 of 2022, under sections 363, 376-DA IPC and Section 5K/6 POCSO Act, Police Station- Kairana, District-Shamli. In the aforesaid F.I.R., an unknown person has been arraigned as solitary accused.

After completion of statutory investigation of concerned case crime number, Investigating Officer submitted the charge sheet dated 7.2.2023, whereby four persons namely, Amir, Avesh, Adil were charge sheeted under sections 363, 376-DA IPC and Section 5 Ta/6 POCSO Act. After submission of aforesaid charge sheet, cognizance was taken upon same by Court concerned. Consequently, the trial procedure commenced. Charges were framed against accused persons, who pleaded innocence. Consequently, burden fell upon prosecution to bring home the charges so framed against charge sheeted accused. Prosecution in discharge of this burden adduced first informant and three prosecution witnesses, namely P.W.1-Yaqub, P.W.2-Samreen, P.W.3-Saniya, P.W.4- Km. Sana (prosecutrix). The first informant and the prosecutrix P.W.1- Yaqub, and P.W.4- Km. Sana have also not supported the F.I.R. The statement of the aforesaid witnesses are on record from page 81 onwards of the paper book pertaining the applicant Amir. On the aforesaid premise, the learned counsel for applicants contends that since the first informant and the prosecutrix have not supported the F.I.R., no useful purpose shall be served in prolonging the custodial arrest of applicants. Furthermore, once the prosecutrix and the first informant have been examined by Court below therefore, it cannot be said that in case the applicants are enlarged on bail they shall either terrorize the witnesses or hamper the course of trial. As such, the applicants are liable to be enlarged on bail.

Even otherwise, applicants are men of clean antecedents inasmuch as they have no criminal history to their credit except the present one. Applicants are in jail since 17.11.2022. As such, they have undergone more than one year of incarceration. Police report in terms of Section 173 (2) Cr.P.C. has already been submitted against applicants, as such, the entire evidence sought to be relied upon by prosecution against applicants stands crystalized, on the record necessitating the custodial arrest of applicants during the pendency of trial. It is thus urged that applicants are liable to be enlarged on bail. In case the applicants are enlarged on bail, they shall not misuse the liberty of bail and shall co-operate with the

trial.

Per contra, the learned A.G.A. and the learned counsel for first informant have opposed the prayer for bail. They submit that since applicants are named as well as charge sheeted accused, therefore they do not deserve any indulgence by this Court. However, they could not dislodge the factual and legal submissions urged by the learned counsel for applicants, with reference to the record at this stage.

Having heard the learned counsel for applicants, the learned A.G.A. for State and the learned counsel for first informant, upon perusal of material brought on record, evidence, nature and gravity of offence as well as complicity of applicants, accusation made coupled with the fact that first informant the prosecutrix and other witness of fact who have deposed before Court below upto this stage, have not supported the F.I.R., therefore, in view of above, no useful purpose shall be served in prolonging the custodial arrest of applicant, police report in terms of Section 173 (2) Cr.P.C. has already been submitted against applicants, as such, the entire evidence sought to be relied upon by the prosecution against applicants stands crystalized, yet inspite of above, the learned A.G.A. could not point out any such circumstance from the record necessitating the custodial arrest of applicant during the pendency of trial, the period of incarceration undergone, the clean antecedents of applicant, therefore irrespective of the objection raised urged by the learned A.G.A. and the learned counsel for first informant in opposition to the present application for bail but without making any comment on the merits of the case, applicant has made out a case for bail.

Accordingly, the bail applications are **Allowed**.

Let the applicants- **Amir, Adil and Suhel Ahmad**, be released on bail in the aforesaid case crime number on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice:-

(i) THE APPLICANT SHALL FILE AN UNDERTAKING TO THE EFFECT THAT HE/SHE SHALL NOT SEEK ANY ADJOURNMENT ON THE DATE FIXED FOR EVIDENCE WHEN THE WITNESSES ARE PRESENT IN COURT. IN CASE OF DEFAULT OF THIS CONDITION, IT SHALL BE OPEN FOR THE TRIAL COURT TO TREAT IT AS ABUSE OF LIBERTY OF BAIL AND PASS ORDERS IN ACCORDANCE WITH LAW.

(ii) THE APPLICANT SHALL REMAIN PRESENT BEFORE THE TRIAL

COURT ON EACH DATE FIXED, EITHER PERSONALLY OR THROUGH HIS/HER COUNSEL. IN CASE OF HIS/HER ABSENCE, WITHOUT SUFFICIENT CAUSE, THE TRIAL COURT MAY PROCEED AGAINST HIM/HER UNDER SECTION 229-A IPC.

(iii) IN CASE, THE APPLICANT MISUSES THE LIBERTY OF BAIL DURING TRIAL AND IN ORDER TO SECURE HIS/HER PRESENCE PROCLAMATION UNDER SECTION 82 CR.P.C., MAY BE ISSUED AND IF APPLICANT FAILS TO APPEAR BEFORE THE COURT ON THE DATE FIXED IN SUCH PROCLAMATION, THEN, THE TRIAL COURT SHALL INITIATE PROCEEDINGS AGAINST HIM/HER, IN ACCORDANCE WITH LAW, UNDER SECTION 174-A IPC.

(iv) THE APPLICANT SHALL REMAIN PRESENT, IN PERSON, BEFORE THE TRIAL COURT ON DATES FIXED FOR (1) OPENING OF THE CASE, (2) FRAMING OF CHARGE AND (3) RECORDING OF STATEMENT UNDER SECTION 313 CR.P.C. IF IN THE OPINION OF THE TRIAL COURT ABSENCE OF THE APPLICANT IS DELIBERATE OR WITHOUT SUFFICIENT CAUSE, THEN IT SHALL BE OPEN FOR THE TRIAL COURT TO TREAT SUCH DEFAULT AS ABUSE OF LIBERTY OF BAIL AND PROCEED AGAINST THE HIM/HER IN ACCORDANCE WITH LAW.

(v) THE TRIAL COURT MAY MAKE ALL POSSIBLE EFFORTS/ENDEAVOUR AND TRY TO CONCLUDE THE TRIAL WITHIN A PERIOD OF ONE YEAR AFTER THE RELEASE OF THE APPLICANT.

However, it is made clear that any wilful violation of above conditions by the applicant, shall have serious repercussion on his/her bail so granted by this court and the trial court is at liberty to cancel the bail, after recording the reasons for doing so, in the given case of any of the condition mentioned above.

Order Date :- 7.12.2023

Arshad