

Court No. - 72

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41340 of 2023

Applicant :- Sharif

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

Counsel for Applicant :- Jag Narayan, Sushil Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal, J.

1. List has been revised.
2. Heard Sri Vijay Bahadur Shiv Hare, Advocate holding brief of Sri Jag Narayan, learned counsel for the applicant as well as Sri S.P. Pandey, learned A.G.A. for the State and perused the record.
3. Applicant seeks bail in Case Crime No.644 of 2022, under Sections 363, 366, 372, 376 I.P.C., 5L/6 POCSO Act and 3(2) (V) SC/ST Act, Police Station Kannauj, District Kannauj, during the pendency of trial.
4. This is the second bail application on behalf of the applicant. The first bail application was rejected by this Court vide order dated 14.2.2023.
5. Learned counsel for the applicant has stated that subsequent to the said rejection order, the bail application of co-accused person Ramsanehi was allowed by this Court vide order dated 26.5.2023 passed in Criminal Misc. Bail Application No.23762 of 2023. Learned counsel has stated that there are more grave allegations against the co-accused person Ramsanehi who has been enlarged on bail. Subsequent to the rejection order dated 14.2.2023, two prosecution witnesses of fact have been examined. The PW-1 is the victim who has although supported the prosecution story during examination-in-chief, but during her cross-examination the same day she has not supported the prosecution story. The same is the case of the informant who has been examined as PW-2 by the trial court.
6. Learned counsel for the applicant has further stated that there is no likelihood of conviction in the present matter. It is further stated that there is no criminal history of the applicant. The applicant is languishing in jail since 28.9.2022. In case, the applicant is released on bail, he will not misuse the liberty of bail.
7. Per contra, learned A.G.A. has vehemently opposed the bail application but unable to dispute the submissions raised by the

learned counsel for the applicant.

8. The Apex Court in the case of **Union of India vs. K.A. Najeeb**, AIR 2021 SC 712, has observed as under:-

"We are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent's prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail."

9. Considering the facts and circumstances of the case, submissions made by learned counsel for the parties and taking into consideration the fact that co-accused person Ramsanehi has been enlarged on bail coupled with the fact that two prosecution witnesses of fact, namely, PW-1 & PW-2 have not supported the prosecution story during their cross-examination taken up the same day, 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.

10. Let the applicant- **Sharif** involved in aforementioned case crime number 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.

- (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.

11. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail. Identity, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

12. It is made clear that observations made in granting bail to the applicant shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

Order Date :- 3.11.2023/Vikas

[Krishan Pahal, J.]