

Court No. - 73

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 38602 of 2023

Applicant :- Chandrika Yadav

Opposite Party :- State of U.P.

Counsel for Applicant :- Ganesh Shanker Srivastava

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. According to the prosecution case, applicant, who is said to be the Secretary of Sadhan Sahkari Samiti Limited, Mahta Vikas Khand, Shohratgarh, is alleged to have embezzled the amount of Rs.4,14,622.90. F.I.R. was lodged against him on 15.6.2023 and after investigation, now charge-sheet has been submitted into the matter.

3. At the very outset, it has been specifically mentioned in paragraph-21 of the bail application that the present applicant is suffering from chronic disease of Cancer since 2020 and he has been diagnosed as a patient of throat cancer and there is no hope for his life and his disease is at an advance stage. Before lodging of the F.I.R., no notice has been given to the applicant and he has absolutely given no opportunity to put his version before any authority. The whole game has been played by the informant Devendra Pratap Agrahari, who happens to be the Upper Zila Sahkari Adhikari. Applicant has been retired from service. The inquiry report, on the basis of which F.I.R. was lodged, is an ex-parte report and the applicant was never given any opportunity to participate in the said inquiry proceedings. Lastly it is submitted that no offence under Section 409 IPC is made out against the applicant. The applicant has been languishing in jail since 30.7.2023.

4. Per contra, learned A.G.A. opposed the prayer for bail and submitted that after the retirement of applicant when he was repeatedly insisted upon to return the money of the department, only a sum of Rs.35,000/- and Rs.15,000/- on two occasions were repaid by him and rest of the amount measuring more than Rs.4

lakh has been embezzled by him.

5. Considering the facts and circumstances of the case and particularly keeping in view the serious ailment of the applicant and the period of his detention, grounds taken in the bail application are sufficient. Hence, keeping in view the nature of the offence, evidence, complicity of 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 **Chandrika Yadav** involved in Case Crime No.185 of 2023 under Section 409 IPC, Police Station Shohratgarh, District - Siddharth Nagar 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.

Order Date :- 16.10.2023

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