Court No. - 77

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 38649 of 2023

Applicant :- Aasif
Opposite Party :- State of U.P.
Counsel for Applicant :- Sati Shanker Tripathi,A.K. Mishra
Counsel for Opposite Party :- G.A.

Hon'ble Mrs. Renu Agarwal,J.

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

2. The present first bail application has been filed on behalf of the applicant in Case Crime No. 120 of 2023 under Sections 392, 411 I.P.C. Police Station Nindhauli Kalan, District Etah with the prayer to enlarge him on bail.

3. Learned counsel for the accused-applicant submitted that the applicant is innocent and has been falsely implicated in the instant case due to malafide intentions. It is submitted that applicant was not named in the F.I.R. and his name surfaced in the statement of co-accused Pushpendra @ Chhotu when he was arrested by the police during investigation. It is further submitted that the role of the present applicant is of informing the accused Pushpendra regarding the carrying of the amount by the employees of informant. It is contended that nothing incriminating has been recovered from the possession of the applicant and only Rs. 10,450/- has been recovered from his possession which belonged to him. It is next contended that there is no public witness of the alleged recovery and no test identification parade was conducted. It is further submitted that due to business

rivalry, applicant has been falsely implicated in this case. Applicant is languishing in jail since 20.07.2023 and if he is granted the liberty of bail he will not misuse the same and he is ready to furnish his sufficient sureties, bonds and personal bonds.

4. On the other hand, learned AGA has opposed the prayer of bail but could not controvert the aforesaid arguments as advanced by learned counsel for the applicant.

5. Considering the fact that the the applicant was not named in the F.I.R., his name surfaced in the confessional statement of co-accused Pushpendra @ Chhotu, nothing incriminating has been recovered from the possession of the applicant, there is no public witness of the alleged recovered currency notes, applicant has no criminal history, case is triable by Magistrate and without expressing any opinion on the merits of the case, accused-applicant is liable to be released on bail.

6. Let applicant **Aasif** be released on bail in the above case crime number and on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of Court concerned with the following conditions :-

(i) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates 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 counsel. In case of his absence, without sufficient

cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the court on the date fixed in such proclamation, then the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

(iv) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) 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 him in accordance with law.

(v) The applicant shall also furnish an undertaking from the sureties that the properties (movable/immovable) which are the basis of accepting the surety, shall not be disposed of by them till the conclusion of trial.

(vi) The applicant shall also give an undertaking to the effect that he will not change his address without prior intimation to the trial court concerned.

(Renu Agarwal,J.)

Order Date :- 17.10.2023\Karan

Digitally signed by :-
KUMAR KARAN RAO
High Court of Judicature at Allahabad