

Court No. - 72

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 39004 of 2023

Applicant :- Yunis

Opposite Party :- State of U.P.

Counsel for Applicant :- Devendra Dahma, Vijay Kumar Dwivedi

Counsel for Opposite Party :- G.A., Pranshu Dwivedi, Ram Prakash Dwivedi

Hon'ble Krishan Pahal, J.

1. List has been revised.
2. Heard Sri Vijay Kumar Dwivedi, learned counsel for the applicant, Sri Ram Prakash Dwivedi, learned counsel for the informant as well as Ms. Ifrah Islam, learned A.G.A. for the State and perused the material placed on record.
3. Applicant seeks bail in Case Crime No.322 of 2023, under Sections 420, 409, 120-B I.P.C., Police Station Rorawar, District Aligarh, during the pendency of trial.
4. As per prosecution case, the applicant in collusion with the account officer of the Alana company, Aligarh is stated to have usurped an amount of Rs.28,32,622/- illegally.
5. Learned counsel for the applicant has argued that the applicant is absolutely innocent and has been falsely implicated in the present case with a view to cause unnecessary harassment and to victimize him. The applicant has been charged under Section 409 I.P.C. only. The applicant is not an employee of the said company, as such, no offence under Section 409 I.P.C. is made out against him. The applicant is a bona fide person and he had supplied 77 buffaloes to the company of the informant, as such, the said money was transferred to him, which has been filed as Annexure No.2 to the affidavit. The applicant has nothing to do with the said offence. The informant has forged the documents filed with the counter affidavit.
6. Learned counsel for the applicant has further stated that the invoice numbers of the applicant are MEAT-89923023770-3102794, MEAT-89923023771-3102795, MEAT-89923023772-3102796 and MEAT-89923023773-3102797. Learned counsel has stated that the co-accused person Nooruzzama Siddiqui,

who is an employee of the said company, has already been granted interim protection by this Court vide order dated 18.10.2023 passed in Criminal Misc. Anticipatory Bail Application U/S 438 Cr.P.C. No.10644 of 2023. The case of the applicant is at better footing to co-accused person, but he has been arrested and Rs.50,000/- has been foisted on him which belongs to him.

7. Several other submissions have been made on behalf of the applicant to demonstrate the falsity of the allegations made against him. The circumstances which, as per counsel, led to the false implication of the applicant have also been touched upon at length. It is further stated that there is no criminal history of the applicant. The applicant is languishing in jail since 26.7.2023. In case, the applicant is released on bail, he will not misuse the liberty of bail.

8. Per contra, learned counsel for the informant and learned A.G.A. have vehemently opposed the bail application. Learned counsel for the informant has stated that he has filed a receipt with the counter affidavit as Annexure-CA-2 regarding the same buffaloes in which the invoice number is MEAT-89923024182-3104346. Learned counsel has stated that the applicant had supplied only two buffaloes and the said receipt has been filed as Annexure-CA-1 to the counter affidavit. Learned counsel has further stated that the applicant is not entitled for bail as the amount of Rs.12 lakhs, which are in the account of the applicant, has been seized by the Investigating Officer.

9. Considering the facts and circumstances of the case, submissions made by learned counsel for the parties, the evidence on record and taking into consideration the fact that the co-accused person has been granted interim protection and the allegations do not fall within the purview of Section 409 I.P.C., 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- **Yunis**, who is involved in aforementioned 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 following conditions. Further, before issuing the release order, the sureties be verified.

(i) The applicant shall file an undertaking to the effect that he 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 counsel. In case of his absence, without sufficient cause, the Trial Court may proceed against him under Section 229-A IPC.

(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., 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, 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 him in accordance with law.

11. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

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 :- 26.10.2023

Vikas

[Krishan Pahal, J.]