

Court No. - 72

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 39113 of 2023

Applicant :- Surendra Tiwari

Opposite Party :- State of U.P.

Counsel for Applicant :- Hare Ram Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. List has been revised.
2. Heard Sri Hare Ram Pandey, learned counsel for the applicant, Sri Anil Kumar Mishra, learned A.G.A. for the State and perused the material placed on record.
3. Applicant seeks bail in Case Crime No. 523 of 2023, under Sections 420, 392, 411, 467, 468, 471 I.P.C., Police Station Shahpur, District Gorakhpur, during the pendency of trial.
4. As per prosecution case, some unknown persons riding a bullet motorcycle are stated to have robbed the informant of her ornaments and Rs.40,000/- on 24.7.2023 at about 05:00 a.m.
5. Learned counsel for the applicant has argued that the applicant has been falsely implicated in the present case. The FIR was instituted after a delay of more than one day and there is no explanation of the said delay caused. Learned counsel has stated that the applicant is not named in the FIR and his name has come up later on as the police had arrested him and falsely shown recovery of two *Kangans*, weighing 9 grams each, from him. Learned counsel has further stated that the FIR states that the weight of said *Kangans* was 12 grams each, as such, the recovery is false.
6. Learned counsel for the applicant has further stated that the applicant has a criminal history of two cases and he has been enlarged on bail in all the two cases, which has been explained in paragraph-2 of the supplementary affidavit dated 9.10.2023. The copy of the bail orders have been filed as Annexure-SA-1 & SA-2 to the supplementary affidavit. 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. The applicant is languishing in jail since 31.7.2023. In case, the applicant is released on bail, he will not misuse the liberty of bail.

7. Learned A.G.A. has vehemently opposed the bail application.

8. Considering the facts and circumstances of the case, submissions made by learned counsel for the parties, the evidence on record, 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.

9. Let the applicant- **Surendra Tiwari**, 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 not tamper with evidence.

(ii) 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.

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

11. 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 :- 28.10.2023

Vikas

[Krishan Pahal, J.]