Court No. - 77

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 39819 of 2023

Applicant :- Shivam Gupta @ Krishna
Opposite Party :- State of U.P.
Counsel for Applicant :- Lavkush Kumar Bhatt
Counsel for Opposite Party :- G.A.

Hon'ble Mrs. Renu Agarwal,J.

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

The present first bail application has been filed on behalf of the applicant in Case Crime No. 353 of 2023, under sections 420, 467, 406 I.P.C. and section 66-C & 66-D of I.T. Act, P.S. Kotwali Farrukhabad, district-Farrukhabad with the prayer to enlarge him on bail.

Learned counsel for the accused-applicant submits that the applicant is innocent and has been falsely implicated in the instant case due to malafide intentions. No incriminating article or material has been recovered either from the applicant or on his pointing out. The alleged recovery of 14 non activated sim cards, which has been shown from the applicant is totally fake and false and there is no evidence on record, which could show that the alleged sim cards have been misused by the applicant. There is no public witness of the alleged recovery. He next submits that the offence is triable by Magistrate. He further submits that similarly placed other co-accused Ram Niwas and Dilip Kumar have already been enlarged on bail by co-ordinate Benches of this Court, vide orders dated 11.10.2023 and today, i.e. 16.10.2023 passed in Criminal Misc. Bail Application Nos. 40571 of 2023 and 40972 of 2023, copy of bail order produced by learned counsel for the applicant is taken on record. He lastly submits that since the role of the applicant is identical to that of co-accused Ram Niwas and Dilip Kumar, who have already enlarged on bail, hence the applicant is also entitled to be enlarged on bail on the ground of parity. Applicant is having no criminal history and he is languishing in jail since 15.8.2023, if he is granted the liberty of

bail he will not misuse the same and he shall ready to furnish his sufficient sureties, bonds and personal bonds.

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.

Considering the fact that the there is no public witness of the alleged recovery, applicant is not a previous convict, similarly placed co-accused Ram Niwaw and Dilip Kumar have been granted bail by coordinate Benches of this Court and without expressing any opinion on the merits of the case , accused-applicant is liable to be released on bail.

Let applicant **Shivam Gupta @ Krishna** 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 :- 16.10.2023
Faridul

Digitally signed by :-
FAREEDUL HASAN
High Court of Judicature at Allahabad