

Court No. - 85

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 40898 of 2023

Applicant :- Constable Yashvir

Opposite Party :- State of U.P.

Counsel for Applicant :- Irfan Ahmad Malik, Rajesh Kumar, Saurabh Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Mayank Kumar Jain, J.

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

This is the first bail application has been filed on behalf of applicant in Case Crime No. 412 of 2023, under Section 7 Prevention of Corruption Act, Police Station Pilkhuwa, District Hapur with the prayer to enlarge the applicant on bail.

It has been argued by learned counsel for the applicant that applicant is innocent and he has been falsely implicated in the present case. The case of prosecution is that on 16.08.2023 the father of the informant was driving a vehicle which met with an accident on a fly over since it was hit from behind by a bus. The truck was parked inside the police chauki and on the request it was permitted to transfer the loaded material to another vehicle. As per prosecution story Applicant made a demand of Rs. 1,00,000/- as bribe for that purpose the friend of informant namely, Manoj made recording through his mobile phone the applicant took bribe of Rs. 9,000/- in cash on 16.08.2023 at around 2:30 A.M.

It is submitted that applicant is innocent and falsely implicated on the basis of service rivalry between the Chauki In-charge and other police constables. It is further submitted that so far as the voice recording is concerned and F.S.L. report is still awaited, the applicant made no demand of bribe and did not take any money from the informant and there is a delay of 26 hours in lodging the F.I.R. the alleged recovery of amount is false and there are contradiction in the version of the F.I.R. and press release not issued by S.P., Hapur, therefore, no offence under Section 7 of the Prevention of Corruption Act is made out against the applicant. It is further submitted that applicant is languishing in jail since 17.08.2023 and the offence is punishable with the maximum sentence of seven years, the applicant has no criminal history and

departmental proceedings is going underway and that in case he is released on bail, he will not misuse the liberty of bail and will cooperate in trial.

Per contra, the learned Additional Government Advocate has opposed the prayer for grant of bail and submitted that the applicant is named in the F.I.R. he took Rs. 9,000/- bribe from the informant the amount of bribe was recovered on their pointing. It is also submitted that recording was also made when the applicant was making demand of bribe but he could not dispute the fact that so far as the recording of the demand is concerned and the F.S.L. report is still awaited and departmental inquiry is underway against the applicant.

Considering the entire facts and circumstances of the case, submissions of learned counsel for the parties, nature of evidence and all attending facts and circumstances of the case, without expressing any opinion on 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**.

Let the applicant **Constable Yashvir** in the aforesaid crime be released on bail on furnishing a personal bond and **two heavy local sureties** each in the like amount to the satisfaction of court concerned subject to the following conditions:

- (1). The applicant will not tamper with the prosecution evidence during the trial.
- (2). The applicant will not influence any witness.
- (3). The applicant will appear before the trial Court on the date fixed, unless personal presence is exempted.
- (4). 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 to any police officer or tamper with the evidence.

In case of breach of any of the above condition, the prosecution shall be at liberty to move an application before this Court seeking cancellation of the bail.

Order Date :- 16.10.2023

Gaurav