

Court No. - 72

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 40958 of 2023

Applicant :- Tariq Mahmood And Another

Opposite Party :- State of U.P.

Counsel for Applicant :- Gaurav Kakkar, Mohammad Sadab Khan

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal, J.

1. List has been revised.
2. Heard Sri Gaurav Kakkar, learned counsel for the applicants, Sri Ram Mohit Yadav, learned A.G.A. for the State and perused the material placed on record.
3. Applicants seek bail in Case Crime No. 541 of 2022, under Sections 419, 420, 467, 468, 386, 504, 506 Police Station Mauaima, District Prayagraj, during the pendency of trial.
4. It is submitted by learned counsel for the applicants that similarly placed co-accused person, Aamir Mahmood has already been enlarged on bail by the coordinate Bench of this Court vide order dated 2.5.2023 passed in Criminal Misc. Bail Application No.52820 of 2022. The applicants are languishing in jail since 29.3.2023. The criminal history of one case assigned to the applicants stands explained. He further submitted that since the roles of the applicants are identical to that of co-accused, Aamir Mahmood, who has already been enlarged on bail, they are also entitled to be enlarged on bail on the ground of parity.
5. The prayer for bail has been vehemently opposed by learned A.G.A. However, the aforesaid factual aspect of the parity to the co-accused has not been disputed by him.
6. Considering the facts and circumstances of the case, submissions made by learned counsel for the parties, the evidence on record, pending trial and in light of the judgement passed by this Court in ***Nanha S/o Nabhan Kha vs. State of U.P., 1993 Crl.L.J. 938*** and the judgement passed by the Apex Court in ***Paras Ram Vishnoi vs. The Director, Central Bureau of Investigation, MANU/SCOR/22410/2021***, without expressing any opinion on the merits of the case, the Court is of

the view that the applicants have made out a case for bail. The bail application is **allowed** on the ground of parity.

7. Let the applicants- **Tariq Mahmood** and **Shahid Mahmood**, who are involved in aforementioned case crime be released on bail on their 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 applicants shall file an undertaking to the effect that they 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 applicants shall remain present before the Trial Court on each date fixed, either personally or through their counsel. In case of their absence, without sufficient cause, the Trial Court may proceed against them under Section 229-A IPC.

(iii) In case, the applicants misuses the liberty of bail during trial and in order to secure their presence proclamation under Section 82 Cr.P.C., may be issued and if applicants fail to appear before the Court on the date fixed in such proclamation, then, the Trial Court shall initiate proceedings against them, in accordance with law, under Section 174-A IPC.

(iv) The applicants 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 applicants 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 them in accordance with law.

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

9. It is made clear that observations made in granting bail to the applicants shall not in any way affect the learned trial Judge in forming their independent opinion based on the testimony of the witnesses.

Order Date :- 16.10.2023

Vikas

[Krishan Pahal, J.]