

Court No. - 76

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41779 of 2023

Applicant :- Balwant Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Abhishek Kumar Yadav, Rajiv Lochan Shukla

Counsel for Opposite Party :- G.A., Santosh Kumar

Hon'ble Vikram D. Chauhan, J.

1. Learned A.G.A. for the State submits that instructions have been received and has no objection in case the bail application is heard on merits.

2. Heard learned counsel for the applicant, Sri Satya Prakash along with Sri Santosh Kumar, learned counsel for the informant, learned A.G.A. for the State and perused the record.

3. It is submitted by learned counsel for the applicant that one Babban Devi was the owner of the property at village Khargapur and she by Will dated 2.9.2014 has transferred the property in favour of the applicant, however, in the Will instead of Khargapur village Berawan was stated and on account of this mistake, Will has not been executed. It is submitted that under normal course of succession applicant and informant would be legal heirs of property after the death of Babban Devi. However, on the strength of Will dated 2.9.2014, the name of applicant was mutated. The aforesaid mutation was objected by the informant before the revenue authority and the revenue authority found that Will in question, which was registered document, was interpolated by changing the name of village Berawan to Khargapur, as the deceased, who has executed the Will had no land at village Berawan. It is submitted that on account of such interpolation in the document filed before the revenue authority, the revenue authority has cancelled the mutation in favour of the applicant and both applicant and informant have been declared co-owner of the property. The aforesaid finding of the revenue authority has not been challenged by the applicant. It is submitted by learned counsel for the applicant that the aforesaid interpolation was found in the Will, as the property was at Khargapur whereas in the Will, it was incorrectly stated as Berawan.

3-A. Learned counsel for the applicant fairly submits that the benefit arising out of the aforesaid Will has already been reversed by the revenue authority and the applicant is disputing the status of the informant, as the legal heir, however, the same would be taken course in appropriate legal proceedings. At this stage, learned counsel for the applicant submits that although there was interpolation in the Will in question, it cannot be said that interpolation in Will was made by the applicant. He submits that even otherwise leaving aside the Will, applicant is the co-owner of the property in question, which is not disputed by the informant. The applicant has no previous criminal history. Applicant is languishing in jail since 28.7.2023 and in case he is released on bail, he will not misuse the liberty of bail and will cooperate in the trial.

4. Learned counsel for the informant submits that interpolation in the Will in question has been made by the applicant, which is not being disputed by the applicant before this Court. He does not dispute the fact that the mutation, on the strength of disputed Will, has already been reversed by the revenue court. He further submits that previously applicant had applied for anticipatory bail, however, the same has been rejected by the court concerned.

5. Learned A.G.A. for the State opposed the prayer for bail but does not dispute factual matrix of the case.

6. Learned AGA for the State has not brought any fact or circumstances to indicate criminal history or antecedents of the applicant which would disentitle the applicant for Bail.

7. It is not the case of the State that there is a possibility of interdicting fair trial by the accused-applicant if released on bail. No material has been shown that the Applicant is of such character that his mere presence at large would intimidate the witnesses or there is any material to show that applicant will use his liberty to subvert justice or tamper with the evidence.

8. The object of the bail is to secure the attendance of the accused, the detention of the accused pending trial cannot be punitive in nature as there is presumption of innocence in favour of the accused person. Learned A.G.A. has not brought any facts and circumstances to demonstrate that the character of the accused-applicant (s) is such that his mere presence at large would intimidate the witness.

9. Learned A.G.A. has not placed any reasonable apprehension of

the witnesses being tampered with, the larger interest of the public/State will be at peril in case the Applicant is released on bail.

10. It is not the case of the State that the applicant has been convicted for any offence on previous occasion.

11. No material has been placed by the opposite party that the Applicant in the past has attempted to evade the process of law. Further, no material facts and circumstances have been placed to show that it is not in public interest or interest of society at large to release the applicant on bail.

12. No material has been shown to suggest that the applicant is at flight risk, has chance of repeating the offence, or intimidating the witness if enlarged on bail.

13. It is to be seen in the present case that as per per prosecution case, Will dated 2.9.2014 in question was interpolated by the applicant and the village Berawan was interpolated as village Khargapur. Learned counsel for the applicant submits that mutation on the basis of aforesaid disputed Will has been reversed by the revenue authority. It is to be seen in the trial court as to the person, who has interpolated the Will in question. Although applicant is the beneficiary of the aforesaid Will, however the same has been reversed by the revenue authority. The trial in the present case is still to be proceeded with. Applicant is languishing in jail since 28.7.2023. It is further to be seen that applicant has given undertaking before this Court that applicant will not sell the property in question without the dispute of title being cleared by the court of competent jurisdiction.

14. Considering the nature of dispute and the fact that the informant is not disputing the co-ownership of the applicant to the property. The applicant is entitled to be enlarged on bail. The bail application is allowed.

15. Let the applicant **Balwant Kumar** involved in Case Crime No.579 of 2022, under Sections 467, 468, 471, 417, 420 IPC, Police Station Soraon, District Prayagraj be released on bail on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to the following conditions:-

i. The applicant will not tamper with the evidence during the trial.

ii. The applicant will not pressurize/intimidate the prosecution witness.

iii. The applicant will appear before the trial court on the date fixed, unless personal presence is exempted and/or the applicant shall make himself available for interrogation by a police officer as and when required.

iv. The applicant shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.

v. 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 or to any police officer or tamper with the evidence.

vi. The applicant shall not leave India without the previous permission of the Court.

vii. In the event, the applicant changes residential address, the applicant shall inform the court concerned about new residential address in writing.

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

17. It is directed that the trial court shall endeavour to decide the trial proceedings of the aforesaid case as expeditiously as possible preferably within a period of one year from the date of production of a certified copy of this order without granting unnecessary adjournment to any of the parties.

Order Date :- 20.11.2023

D. Tamang