

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42504 of 2023

Applicant :- Prem Rathaur

Opposite Party :- State of U.P.

Counsel for Applicant :- Sanjay Kumar Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma,J.

1. Heard learned counsel for the applicant and learned A.G.A. for the State-opposite party.

2. The instant bail application under Section 439 Cr.P.C. has been filed with the prayer to enlarge the applicant on bail in Case Crime No. 65 of 2023, under Sections 379, 411, 420, 413 I.P.C., Police Station Jaitpur, District Agra during the pendency of the trial.

3. Learned counsel for the applicant submits that the applicant was not named in the first information report and has been falsely implicated in the instant case. The incident is alleged to have occurred on 09.07.2023 and the first information report was lodged on 09.08.2023. The delay in the facts of the present case is fatal to the prosecution case. False recovery of Indian currency of Rs.44,000/- and 3 ATM cards has been shown from the applicant. There is no independent witness to the alleged recovery. The recovered Indian currency and ATM cards cannot be connected with the offence. The applicant was not identified in the CCTV footage. It is next contended that identically placed co-accused Sanjay Rathaur has been granted bail by this Court in Criminal Misc. Bail Application No. 42342 of 2023, Sanjay Rathaur v. State of U.P., vide order dated 04.10.2023. The applicant claims parity. The criminal history of the applicant has been explained in Paragraph-25 of the affidavit. The applicant is in jail since 11.08.2023 and if he is released on bail, he will not misuse the said liberty.

4. Learned A.G.A. has opposed the prayer for bail but could not satisfactorily dispute the aforesaid submissions from the record.

5. Having heard learned counsel for the parties and after perusal of the record, this Court prima facie finds that the applicant was

not named in the first information report and there is no independent witness to the alleged recovery. The applicant was not identified in the CCTV footage. Identically placed co-accused Sanjay Rathaur has been granted bail by this Court. Moreover, the applicant has remained confined for almost two months and after submission of the charge-sheet there is no hope of early conclusion of trial, and no reasonable apprehension has been brought to the fore by the State that the applicant, if enlarged on bail, would either tamper with the evidence or delay the trial or intimidate the witness, therefore, without commenting on the merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

6. Let the applicant- Prem Rathaur, involved in the aforesaid case, be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of Court concerned subject to the conditions that he:

- (i) shall appear on the date fixed by the trial court;
- (ii) shall not tamper with the prosecution evidence; and,
- (iii) shall not pressurize the prosecution witnesses.

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

Order Date :- 19.10.2023
SKT/-