

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42495 of 2023

Applicant :- Ajeet Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Maohammd Nadeem

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma,J.

1. Supplementary affidavit filed by the counsel for the applicant, is taken on record.
2. Heard learned Counsel for the applicant and Sri Shashank Shekhar, learned A.G.A. for the State-respondent.
3. The instant bail application, under Section 439 Cr.P.C., has been filed with a prayer to enlarge the applicant on bail in Case Crime No. 205 of 2023, under Sections 380, 457, 411 IPC, Police Station- Nawabganj, District- Farrukhabad, during pendency of the trial.
4. Counsel for the applicant submits that the applicant was not named in the first information report. The incident is alleged to have occurred in the night intervening 1/2.06.2023 and the first information report was lodged on 11.07.2023. The delay in the facts of the present case is fatal to the prosecution case. The applicant was arrested on 14.07.2023 along with three other co-accused and has been falsely implicated in the instant case. False recovery has been shown from the joint possession of the applicant and other co-accused. There is no independent witness to the alleged recovery. Recovery of Rs. 920/- has also been shown from the applicant. The said amount belongs to the applicant. It is next contended that identically placed co-accused Nagesh has been granted bail by this Court vide order dated 06.09.2023 passed in Criminal Misc. Bail Application No. 39057 of 2023. The applicant claims parity. The criminal history of the applicant has been explained in para 18 of the affidavit and para 3 of the supplementary affidavit. The applicant is in jail since 14.07.2023 and in case he is enlarged on bail, he will not misuse the said liberty.
5. Learned AGA has opposed the prayer for bail. He submits that the applicant has criminal antecedents.
6. Having heard counsel for the parties and having perused the record, this Court prima facie finds that the FIR was lodged belatedly. The applicant was not named in the first information report and was not arrested at the spot. Identically placed co-accused Nagesh has been granted bail by this Court.
7. Insofar as the criminal antecedents of the applicant are concerned, it is not the case of the State that applicant might tamper with or otherwise adversely influence the investigation, or that he might intimidate witnesses before or

during the trial. The State has also not placed any material that applicant in past attempted to evade the process of law. In the opinion of this Court, if the accused is otherwise found to be entitled to bail, he cannot be denied bail only on the ground of criminal history, when no exceptional circumstances on the basis of criminal antecedents have been shown to deny bail to accused. Hence, the Court does not feel it proper to deny bail to the applicant just on the ground that he had criminal antecedent.

8. In **Ash Mohammad v. Shiv Raj Singh, (2012) 9 SCC 446**, the Apex Court in para- 30 has observed as under:

"We may hasten to add that when we state that the accused is a history-sheeter, we may not be understood to have said that a history-sheeter is never entitled to bail. But, it is a significant factor to be taken note of regard being had to the nature of crime in respect of which he has been booked."

9. In the case of **Prabhakar Tewari v. State of U.P. and another, 2020 (11) SCC 648**, the Hon'ble Supreme Court has observed that pendency of several criminal cases against an accused may itself cannot be a basis for refusal of bail.

10. Further, the applicant has remained confined for more than four months and there is no hope of early conclusion of trial, more so when 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, without commenting on the merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

11. Let the applicant- **Ajeet Kumar**, involved in the aforesaid case be released on bail on his furnishing a personal bond and **two heavy sureties** (in view of criminal history) each in the like amount to the satisfaction of the court concerned subject to 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;

12. 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 :- 22.11.2023

Lbm/-