

Court No. - 77

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43434 of 2023

Applicant :- Kinto Khan And 5 Others

Opposite Party :- State of U.P.

Counsel for Applicant :- Ajay Kumar Misra,Santosh Kumar Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Mrs. Renu Agarwal,J.

Supplementary affidavit filed on behalf of applicant in the Court today is taken on record.

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

The present first bail application has been filed on behalf of the applicant in Case Crime No. 188 of 2023, under Sections 406, 420 and 411 I.P.C. Police Station Sinduriya, District Maharajganj with the prayer to enlarge him on bail.

Learned counsel for the accused-applicant submitted that the applicant is innocent and has been falsely implicated in the instant case due to malafide intentions. The alleged incident has taken place on 7.8.2023 but the first information report was lodged after a delay of seven days without any plausible explanation. No incriminating article or material has been recovered either from the applicant or on his pointing out. The recovery of cash, which has been allegedly shown from the applicant is totally fake and false as there is no public witness of the alleged recovery. No identification parade was conducted by the police to ascertain the

real culprit. After the alleged recovery, the applicant has been falsely implicated in Case Crime No. 189 of 2023, which was rejected by the trial court. He further submits that during course of trial the informant did not identify the applicants. The case property was released in favour of the informant. Applicants are having no criminal history and they are languishing in jail since 14.8.2023 and if they are granted the liberty of bail they will not misuse the same and they are ready to furnish their sufficient sureties, bonds and personal bonds.

On the other hand, learned AGA has opposed the prayer of bail but could not controvert the aforesaid arguments as advanced by learned counsel for the applicants.

Considering the fact that FIR was lodged after a delay of seven days, there is no public witness of the alleged recovery, no identification parade was conducted to ascertain the real culprit and without expressing any opinion on the merits of the case, accused-applicants are liable to be released on bail.

Let applicants Kinto Khan, Serun Khan, Muhammad Irfan, Muhammad Zakir Khan, Chand Muhammad and Israhil be released on bail in the above case crime number and on their furnishing personal bond and two sureties each in the like amount to the satisfaction of Court concerned with the following

conditions :-

(i) The applicants shall file an undertaking to the effect that they shall not seek any adjournment on the dates 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 his counsel. In case of his absence, without sufficient cause, the trial court may proceed against them under Section 229-A of the Indian Penal Code.

(iii) In case, the applicants misuse the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the 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 of the Indian Penal Code.

(iv) The applicants shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) 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.

(v) The applicants shall also furnish an undertaking from the sureties that the properties (movable/immovable) which are the basis of accepting the surety, shall not be disposed of by them till the conclusion of trial.

(vi) The applicants shall also give an undertaking to the effect that they will not change their address without prior intimation to the trial court concerned.

(Renu Agarwal,J.)

Order Date :- 18.10.2023
Faridul