

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46331 of 2023

Applicant :- Subhash Banwasi And Another

Opposite Party :- State of U.P.

Counsel for Applicant :- Mithilesh Kumar Gupta, Anju Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma, J.

1. Heard learned Counsel for the applicants and learned A.G.A. for the State.

2. The instant bail application, under Section 439 Cr.P.C., has been filed with a prayer to enlarge the applicants on bail in Case Crime No. 79 of 2022, under Sections 454, 380, 411 I.P.C., Police Station- Kotwali, District- Ballia during pendency of the trial.

3. Counsel for the applicants submits that the incident is alleged to have occurred on 13.2.2022 and the first information report was lodged on 14.2.2022. The applicants were arrested on 9.9.2022 in Case Crime No. 0204 of 2022, under Sections 399, 402 I.P.C., P.S. Ubhaon, District Ballia and have been falsely implicated in the instant case. False recovery of a country made pistol, two live cartridges and Rs.23000/- has been shown from the applicant no.1 whereas a knife and Rs.23,000/- has been shown from the applicant no.2. There is no independent witness to the alleged recovery. The recovered Indian currency cannot be connected with the offence. The criminal history of the applicants has been explained in para 13 of the bail application. The applicants are in jail since 9.9.2022. In case they are enlarged on bail, they 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 counsel for the parties and having perused the record, this Court prima facie finds that there is no independent witness to the alleged recovery and at present there is no substantive evidence against the applicants. Further the applicant has presently remained confined for more than one year 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 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.

6. Let the applicants, **Subhash Banwasi** and **Chhotey Lal Banwasi @ Chhotey** involved in the aforesaid case be released on bail on their furnishing a personal bond and two **heavy** sureties each of the like amount to the satisfaction of court concerned on the following conditions that:

- i. the applicants shall not tamper with the prosecution evidence;
- ii. the applicants shall not pressurize the prosecution witness;
- iii. the applicants shall appear on each and every date fixed by the trial court.
- iv. **the applicants shall appear on 1st Sunday of every month at the concerned police station.**

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 :- 2.11.2023
S.S.