Court No. - 72

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42761 of 2023

Applicant :- Mohd. Arshad
Opposite Party :- State of U.P.
Counsel for Applicant :- Rakesh Kumar Singh,Suresh Kumar Tripathi
Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. List has been revised.

2. Heard Sri Rakesh Kumar Singh, learned counsel for the applicant, Sri V.K.S. Parmar, learned A.G.A. for the State and perused the material placed on record.

3. Applicant seeks bail in Case Crime No.306 of 2021, under Sections 395, 412, 419, 420, 467, 468, 471 and 365 I.P.C., Police Station Tharwai, District Prayagraj, during the pendency of trial.

4. It is submitted by learned counsel for the applicant that similarly placed co-accused person Mohammad Albasar has already been enlarged on bail by Co-ordinate Bench of this Court vide order dated 17.04.2023 passed in Criminal Misc. Bail Application No.12168 of 2023. The criminal history assigned to the applicant stands explained. The applicant is languishing in jail since 22.06.2023. He further submitted that since the role of the applicant is identical to that of co-accused who has already been enlarged on bail, he is also entitled to be enlarged on bail on the ground of parity.

5. The prayer for bail has been vehemently opposed by learned A.G.A. However, the aforesaid factual aspect of the parity to the co-accused has not been disputed by him.

6. Considering the facts and circumstances of the case, submissions made by learned counsel for the parties, the evidence on record, pending trial and in light of the judgement passed by this Court in ***Nanha S/o Nabhan Kha vs. State of U.P., 1993 Crl.L.J. 938*** and the judgement passed by the Apex Court in ***Paras Ram Vishnoi vs. The Director, Central Bureau of Investigation, MANU/SCOR/22410/2021,*** without

expressing any opinion on the merits of the case, this Court is of the view that the applicant has made out a case for grant of bail on the ground of parity. The bail application is **allowed** on the ground of parity.

7. Let the applicant- **Mohd. Arshad**, who is involved in aforementioned case crime be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions. Further, before issuing the release order, the sureties be verified.

(i) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the date 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 applicant 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 him under Section 229-A IPC.
(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C., may be issued and if applicant fails to appear before the Court on the date fixed in such proclamation, then, the Trial Court shall initiate proceedings against him, in accordance with law, under Section 174-A IPC.
(iv) The applicant shall remain present, in person, before the Trial Court on dates fixed for (1) opening of the case, (2) framing of charge and (3) recording of statement under Section 313 Cr.P.C. If in the opinion of the Trial Court absence of the applicant 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 him in accordance with law.

8. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

9. It is made clear that observations made in granting bail to the applicant shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

Order Date :- 16.10.2023
Ravi Kant

(Krishan Pahal, J.)

Digitally signed by :-
RAVI KANT
High Court of Judicature at Allahabad