

Court No. - 72

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43699 of 2023

Applicant :- Abhishek Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Ajeet Kumar Shukla, Sarvesh Kant Shukla

Counsel for Opposite Party :- G.A., Akhilesh Kumar Singh

Hon'ble Krishan Pahal, J.

1. List has been revised.
2. Heard Sri Ajeet Kumar Shukla, learned counsel for the applicant, Sri Akhilesh Kumar Singh, learned counsel for the informant as well as Sri R.P. Patel, learned A.G.A. for the State and perused the material placed on record.
3. Applicant seeks bail in Case Crime No.130 of 2022, under Section 307, 504, 506 I.P.C., Police Station- Singra, District- Varanasi, during the pendency of trial.
4. It is submitted by learned counsel for the applicant that similarly placed co-accused person, Nishant Singh has already been enlarged on bail by the Co-ordinate Bench of this Court vide order dated 28.6.2022 passed in Criminal Misc. Bail Application No.25715 of 2022. The applicant is languishing in jail since 25.8.2023. 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 counsel for the informant and learned A.G.A. Learned counsel for the informant has stated that the applicant has wrongly stated in the bail application that he has no criminal history, although he has one criminal history to his credit.
6. In rebuttal, learned counsel for the applicant has stated that the criminal history of one case assigned to the applicant stands explained as the applicant has been enlarged on bail in the said case and the copy of bail order has been annexed as Annexure No.8 to the affidavit filed with the bail application.
7. 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 Cr.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, the Court is of the view that the applicant has made out a case for bail. The bail application is **allowed** on the ground of parity.

8. Let the applicant- **Abhishek Kumar**, 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.

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

10. 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 :- 26.10.2023

Vikas

[Krishan Pahal, J.]