

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43506 of 2023

Applicant :- Raj Kumar Alias Shera

Opposite Party :- State of U.P.

Counsel for Applicant :- Sanjay Srivastava

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 AGA 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. 214 of 2022, under Sections 379, 41/411 IPC, Police Station Panki, District Kanpur Nagar, during the pendency of trial.
4. Counsel for the applicant submits that the applicant has been falsely implicated in the instant case. The applicant was the pillion rider. The motorcycle was driven by co-accused Anmol Chauhan. False recovery of a country made pistol, one live cartridge and ornaments made of yellow and white metal has been shown from the applicant. There is no independent witness to the alleged recovery. Co-accused Anmol Chauhan has been granted bail by this Court vide order dated 10.10.2022 passed in Criminal Misc. Bail Application No. 42098 of 2022 (Anmol Chauhan Vs. State). The applicant claims parity. The criminal history of the applicant has been explained in para 8 of the affidavit and para 2 of the supplementary affidavit. The applicant is in jail since 31.05.2022 and in case he is enlarged on bail, he will not misuse the said liberty.
5. Learned AGA has opposed the prayer for bail but could not satisfactorily dispute the aforesaid submissions from the record.
6. 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. At this stage, there is no substantive evidence against the applicant. Co-accused Anmol Chauhan has been granted bail by this Court. Further, the applicant has remained confined for almost one and half year and 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.

7. Let the applicant **Raj Kumar @ Shera**, involved in the aforesaid case be released on bail on his furnishing a personal bond and two heavy sureties each in the like amount to the satisfaction of the court concerned subject to the 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.

8. 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 :- 28.11.2023

Lbm/-