

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43635 of 2023

Applicant :- Umesh

Opposite Party :- State of U.P.

Counsel for Applicant :- Neelabh Srivastava, Sumit Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma, J.

1. Supplementary affidavit filed by learned counsel for the applicant is taken on record.
2. Heard learned counsel for the applicant and learned A.G.A. for the State-opposite party.
3. The instant bail application under Section 439 Cr.P.C. has been filed with the prayer to enlarge the applicant on bail in Case Crime No. 333 of 2023, under Section 5/25 Arms Act, Police Station Puwayan, District Shahjahanpur during the pendency of the trial.
4. Learned counsel for the applicant submits that the applicant has been falsely implicated in the instant case. False recovery of a country made rifle, five country made pistols and other weapons has been shown from the joint possession of the applicant and two other persons. There is no independent witness to the alleged recovery. The said recovery has been made from an open place which does not belong to the applicant. It is next contended that co-accused Alisher has been granted bail by this Court in Criminal Misc. Bail Application No. 23742 of 2023, Alisher v. State of U.P., vide order dated 13.07.2023. The applicant claims parity. The criminal history of the applicant has been explained in Paragraphs-2 to 5 of the supplementary affidavit. The applicant is in jail since 28.04.2023 and if he is released on bail, he will not misuse the said liberty.
5. Learned A.G.A. has opposed the prayer for bail but could not satisfactorily dispute the aforesaid submissions from the record.
6. Having heard learned counsel for the parties and after perusal of the record, this Court prima facie finds that there is no independent witness to the alleged recovery. Identically placed co-

accused Alisher has been granted bail by this Court. Moreover, the applicant has remained confined for almost six months and after submission of the charge-sheet there is no hope of early conclusion of trial, 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, therefore, 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- Umesh, 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 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 :- 26.10.2023

SKT/-