

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44126 of 2023

Applicant :- Ashwani Rathore Alias Ajay

Opposite Party :- State of U.P.

Counsel for Applicant :- Prashant Kumar, Mayank Gaurav

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma, J.

1. Heard learned counsel for the applicant and learned AGA for the State-respondent.
2. 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.138 of 2023, under Sections 380, 411, 457 IPC, Police Station Nawabganj, District Farrukhabad, during the pendency of trial.
3. Counsel for the applicant submits that the applicant was not named in the first information report. The incident is alleged to have occurred in the night intervening 30th April/1st May, 2023. The first information report was lodged on 06.05.2023. The delay is fatal to the prosecution case. The applicant was arrested on 14.07.2023 and has been implicated in the instant case. False recovery of two inverter battery, two inverter, one printer and one TFT has been shown from the joint possession of the applicant and other co-accused. False recovery of two mobile phones has been shown from the personal possession of the applicant. There is no independent witness to the alleged recovery. Recovery of Rs. 300/- has also been shown from the applicant. The said amount belongs to the applicant. It is next contended that identically placed co-accused Nagesh has been granted bail by this Court in Criminal Misc. Bail Application No. 39647 of 2023 vide order dated 06.10.2023. The applicant claims parity. The criminal history of the applicant has been explained in para 33 of the affidavit. The applicant is in jail since 14.07.2023 and in case he is enlarged on bail, he will not misuse the said liberty.
4. Learned AGA 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 the applicant was not named in the first information report. The first information report

has been lodged belatedly. There is no independent witness to the alleged recovery. At present there is no substantive evidence against the applicant. Further, the applicant has remained confined for more than three months and after submission of the charge-sheet 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 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.

6. Let the applicant **Ashwani Rathore @ Ajay**, 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;
- (iii) shall not pressurize the prosecution witnesses.;
- (iv) shall not leave district without the leave of the trial court; and,
- (v) shall appear on first Sunday of every month at the Police Station concerned.

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 :- 3.11.2023

Lbm/-