Court No. - 76

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44228 of 2023

Applicant :- Pawan Kumar
Opposite Party :- State of U.P.
Counsel for Applicant :- Somdev Dixit
Counsel for Opposite Party :- G.A.

Hon'ble Vikram D. Chauhan,J.

1. Learned A.G.A. for the State submits that instructions have been received and has no objection in case the bail application is heard on merits.

2. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.

3. It is submitted by learned counsel for the applicant that the First Information Report was lodged against unknown person for theft of one bag in which jewellery, mobile charger, diary and other things were kept. It is submitted that after one and half month of the incident, applicant has been apprehended and from the applicant ear rings, one wallet containing Aadhar card, Voter Card, Pan Card, driving license and other articles have been recovered. It is submitted that it is highly improbable that accused person will keep the theft articles for such a long period. The applicant has been falsely implicated in the present case. It is submitted that at the best, offence under Section 411 IPC would be made out against applicant. The criminal history of the applicant has been explained in paragraph no. 3 of the supplementary affidavit. Applicant is languishing in jail since 23.6.2023 and in case he is released on bail, he will not misuse the liberty of bail and will cooperate in the trial.

4. Learned A.G.A. for the State opposed the prayer for bail but does not dispute factual matrix of the case.

5. Learned AGA for the State has pointed out the criminal antecedents of the applicant. No material or circumstance has been brought to the notice of this Court with regard to tampering of evidence or intimidating of witness in previous criminal cases. In **Ash Mohammad Vs. Shiv Raj Singh, (2012) 9 SCC 446**, the Apex Court in para 30 has observed:-

"We may hasten to add that when we state that the accused is a

history-sheeter we may not be understood to have said that a history-sheeter is never entitled to bail. But, it is a significant factor to be taken note of regard being had to the nature of crime in respect of which he has been booked."

6. In the case of **Prabhakar Tewari Vs. State of U.P. and another, 2020 (11) SCC 648,** the Hon'ble Supreme Court has observed that pendency of several criminal cases against an accused may itself cannot be a basis for refusal of bail.

7. In so far as criminal antecedents of the applicant is concerned, it is not the case of the State that applicant might tamper with or otherwise adversely influence the investigation, or that he might intimidate witnesses before or during the trial. The State has also not placed any material that applicant in past attempted to evade the process of law. If the accused is otherwise found to be entitled to bail, he cannot be denied bail only on the ground of criminal history, no exceptional circumstances on the basis of criminal antecedents have been shown to deny bail to accused, hence, the Court does not feel it proper to deny bail to the applicant just on the ground that he had criminal antecedent.

8. The principle that Bail is a rule and Jail is an exception has been well recognised by Apex Court more specifically on the touch stone of Article 21 of the Constitution. The said principle has been reiterated by the Apex Court in **Satyendra Kumar Antil Vs. Central Bureau of Investigation and another**, **2022 (10) SCC 51**. Learned AGA has not shown any exceptional circumstances which would warrant denial of bail to the applicant.

9. No material, facts or circumstances has been shown by learned AGA for the State that the accused may tamper with the evidence or witnesses or the accused is of such character that his mere presence at large would intimidate the witnesses or that accused will use his liberty to subvert justice or tamper with the evidence.

10. It is settled principle of law that the object of bail is to secure the attendance of the accused at the trial. No material particulars or circumstances suggestive of the applicant fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like have been shown by learned AGA for the State.

11. Learned AGA for the State has not shown any material or circumstances that the accused/applicant is not entitled to bail

in larger interests of the public or State.

11-A. It is to be seen in the present case that the First Information Report was lodged against unknown person for theft of one bag in which jewellery, mobile charger, diary and other things were kept. After one and half month of the incident, applicant has been apprehended and from the applicant ear rings, one wallet containing Aadhar card, Voter Card, Pan Card, driving license and other articles have been recovered. It is highly improbable that accused person will keep the theft articles for such a long period. Criminal history of the applicant has been explained in paragraph no.3 of the supplementary affidavit. Applicant is languishing in jail since 23.6.2023.

12. Considering the facts and circumstances of the case, nature of offence, evidence, complicity of the accused, submissions of learned counsel for the parties and 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.

13. Let the applicant **Pawan Kumar** involved in Case Crime No.140 of 2023, under Sections 392, 411 IPC, Police Station Khairgarh, District Firozabad be released on bail on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to the following conditions:-

i. The applicant will not tamper with the evidence during the trial.

ii. The applicant will not pressurize/intimidate the prosecution witness.

iii. The applicant will appear before the trial court on the date fixed, unless personal presence is exempted and/or the applicant shall make himself available for interrogation by a police officer as and when required.

iv. The applicant shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.

v. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

vi. The applicant shall not leave India without the previous permission of the Court.

vii. In the event, the applicant changes residential address, the applicant shall inform the court concerned about new residential address in writing.

14. In case of breach of any of the above condition, the prosecution shall be at liberty to move bail cancellation application before this Court.

Order Date :- 12.12.2023
D. Tamang

Digitally signed by :-
DHIRENDRA TAMANG
High Court of Judicature at Allahabad