

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44813 of 2023

Applicant :- Mohd. Arshad Alias Mohd. Irshad

Opposite Party :- State of U.P.

Counsel for Applicant :- Jai Prakash Singh, Raj Kiran Chaudhary

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma, J.

1. Heard learned counsel for the applicant, Sri Rupak Chaudhary 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. 02 of 2022, under Sections 417, 420, 467, 468, 471, 411, 120-B I.P.C. and Section 66 C and 66 D I.T. Act, P.S. Cyber Crime, District- Varanasi, during the pendency of trial.
3. Counsel for the applicant contends that the applicant was not named in the F.I.R. and has been falsely implicated in the instant case. No amount has been credited in the account of the applicant. The applicant is not a beneficiary of the illicit transaction. The mobile numbers from which calls were made to the informant, does not belong to the applicant. The applicant was arrested along with co-accused Afzal and Sushil Kumar. Identically placed co-accused Sushil Kumar has been granted bail by this Court in Criminal Misc. Bail Application No. 41173 of 2023 vide order dated 22.09.2023. At present, there is no evidence against the applicant to link him with the offence. It is next contended that prior to the instant case, the applicant was not involved in any case, however after his arrest, he was implicated in Case Crime No. 0005 of 2022, under Sections 417, 420, 467, 468, 471, 120B, 411 I.P.C., 66C and 66D of I.T. Act and Section 36/42 Adhar Act, P.S. Cyber Crime, Varanasi. The applicant is in jail since 13.07.2023. 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 F.I.R. No amount has been credited in the account of the applicant. The applicant is not a beneficiary of the illicit transaction. Identically placed co-accused Sushil Kumar has been granted bail by this Court. Further the applicant has remained confined for more than three months and 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 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 **Mohd. Arshad Alias Mohd. Irshad**, involved in the aforesaid case 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 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.

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 :- 26.10.2023
Nitika Sri.