

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44824 of 2023

Applicant :- Durga Jaiswal

Opposite Party :- State of U.P.

Counsel for Applicant :- Chandra Prakash Misra, Sushil Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma, J.

1. Heard learned counsel for the applicant and learned A.G.A. for the State-opposite party.
2. 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. 559 of 2023, under Sections 41, 411, 413, 414, 420, 468, 471 I.P.C., Police Station Campiarganj, District Gorakhpur during the pendency of the trial.
3. Learned counsel for the applicant submits that the applicant runs an auto repair shop known as Jaiswal Auto Service and has been falsely implicated in the instant case. False recovery of motorcycles and motorcycle parts has been shown from the shop of the applicant. There is no independent witness to the alleged recovery. Except confessional statement of the applicant in the police custody, at present there is no evidence to link the applicant with the offence. The applicant is in jail since 06.08.2023 having no criminal history and if he is released on bail, he will not misuse the said liberty.
4. Learned A.G.A. has opposed the prayer for bail but could not satisfactorily dispute the aforesaid submissions from the record.
5. 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. Except confessional statement of the applicant in the police custody, at present there is no substantive evidence against him. The applicant has no criminal antecedents. Moreover, the applicant has remained confined for almost two and half 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.

6. Let the applicant- Durga Jaiswal, 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 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

SKT/-