

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45228 of 2023

Applicant :- Shiv Kumar @ Akash

Opposite Party :- State of U.P.

Counsel for Applicant :- Abdul Khalik

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. 297 of 2023, under Sections 380, 457, 411 I.P.C., Police Station Jaithra Etah, District Etah during the pendency of the trial.
3. Learned counsel for the applicant submits that the applicant has been falsely implicated in the instant case. False recovery of a Samsung Mobile has been shown from the applicant. The recovered mobile cannot be connected with the alleged offence. Neither in the first information report nor in the statement of the first informant IMEI number of stolen mobile was provided to the Investigating Officer. There is no independent witness to the alleged recovery. Further, recovery of Indian currency of Rs.1700/- has also been shown from the applicant. The said amount belongs to the applicant. The applicant is in jail since 16.09.2023 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 and the recovered mobile cannot be connected with the alleged offence. The applicant has no criminal antecedents. Moreover, the applicant has remained confined for almost one 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- Shiv Kumar @ Akash, 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 :- 2.11.2023
SKT/-