

Court No. - 72

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45392 of 2023

Applicant :- Mohd. Akil @ Akib @ Asif And Another

Opposite Party :- State of U.P.

Counsel for Applicant :- Vipul Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. Supplementary affidavit filed by learned counsel for the applicants is taken on record. Heard Sri Vipul Kumar Singh, learned counsel for the applicants as well as Sri Shashi Kant Rai, learned A.G.A. for the State and also perused the material available on record.

2. The present anticipatory bail application has been filed on behalf of the applicants in F.I.R./Case Crime No. 74 of 2023, under Sections 379, 411 IPC, Police Station Kotwali, District Azamgarh, with a prayer to enlarge them on anticipatory bail.

3. It is submitted by learned counsel for the case of the applicants is at par with the co-accused persons, Rakesh @ Raka, who has already been enlarged on bail by a co-ordinate Bench of this Court vide order dated 31.5.2023 passed in Criminal Misc. Bail Application No. 24726 of 2023. The name of the applicants has come up in the statement of the co-accused Rakesh @ Raka, which is not admissible under the Indian Evidence Act. The applicants are languishing in jail since 23.2.2023, having criminal history explained in the supplementary affidavit. It is further stated that the applicant is yet to apply for bail in two cases including one under the U.P. Gangsters Act. He further submitted that since the roles of the applicants are identical to that of co-accused, who has already been enlarged on bail, they are also entitled to be enlarged on bail on the ground of parity.

4. The prayer for bail has been vehemently opposed by learned A.G.A. However, the aforesaid factual aspect of parity to the co-accused has not been disputed by him.

5. Considering the submissions made by learned counsel for the parties, this Court is of the view that the applicants have made out a case for grant of bail on the ground of parity.

Considering the facts and circumstances of the case, submissions made by learned counsel for the parties, the evidence on record, pending trial and in light of the judgement passed by this Court in ***Nanha S/o Nabhan Kha vs. State of U.P., 1993 Crl.L.J. 938*** and the judgement passed by the Apex Court in ***Paras Ram Vishnoi vs. The Director, Central Bureau of Investigation, MANU/SCOR/22410/2021***, without expressing any opinion on the merits of the case, the Court is of the view that the applicants have made out a case for anticipatory bail. The anticipatory bail application is **allowed** on the ground of parity.

Without expressing any opinion on the merits, the bail application is allowed. Let the applicants- **Mohd. Akil @ Akib @ Asif and Shakeel @ Bheema**, who are involved in aforesaid case crime number be released on bail on their furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions. Further, before issuing the release order, the sureties be verified.

(i) The applicants shall not tamper with the evidence.

(ii) The applicants shall remain present, in person, before the Trial Court on dates fixed for (1) opening of the case, (2) framing of charge and (3) recording of statement under Section 313 Cr.P.C. If in the opinion of the Trial Court absence of the applicants is deliberate or without sufficient cause, then it shall be open for the Trial Court to treat such default as abuse of liberty of bail and proceed against them in accordance with law.

6. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

7. It is made clear that observations made in granting bail to the applicants shall not in any way affect the learned trial Judge in forming their independent opinion based on the testimony of the witnesses.

(Justice Krishan Pahal)

Order Date :- 28.10.2023
Shalini