

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45746 of 2023

Applicant :- Neeraj Bhartiya

Opposite Party :- State of U.P.

Counsel for Applicant :- Kamal Singh Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma,J.

1. Heard learned counsel for the applicant and 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. 272 of 2023, under Sections 379, 411, 413, 401, 420 IPC, Police Station Phoolpour, District Prayagraj, during the pendency of trial.

3. Counsel for the applicant submits that the applicant was not named in the first information report. The incident is alleged to have occurred on 05.06.2023 and the first information report was lodged on 24.07.2023. The delay in the facts of the present case is fatal to the prosecution case. The applicant was arrested on 27.07.2023 alongwith three other co-accused persons and has been falsely implicated in the instant case. False recovery of ten ATM cards has been shown from the applicant. There is no independent witness to the recovery. Recovery of Rs. 1,800/- has also been shown from the applicant. The said amount belongs to him. The recovered ATM cards cannot be connected with the offence in question. It is next contended that identically placed co-accused Shailendra Singh and Shiv Prakash Singh have been granted bail by this Court in Criminal Misc. Bail Application Nos. 41254 of 2023 and 41279 of 2023 vide orders dated 18.10.2023 and 19.10.2023. The applicant claims parity. The criminal history of the applicant has been explained in para 13 of the affidavit. The applicant is in jail since 27.07.2023 and 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 the FIR. There is no independent witness to the recovery. The recovered ATM cards cannot be connected with the offence in question. Identically placed co-accused Shailendra Singh and Shiv Prakash Singh have been granted

bail by this Court. Further, the applicant has remained confined for more than three months and after submission of the charge-sheet 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 delay the trial 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- **Neeraj Bhartiya**, involved in the aforesaid case be released on bail on his furnishing a personal bond and two heavy 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;
- (iii) shall not pressurize the prosecution witnesses;
- (iv) shall not leave district without the leave of the trial court; and,
- (v) shall appear on first Sunday of every month at the Police Station concerned.

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 :- 6.11.2023

Lbm/-