Court No. - 76

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 49311 of 2023

Applicant :- Mithlesh Singh
Opposite Party :- State of U.P.
Counsel for Applicant :- Pragya Pandey
Counsel for Opposite Party :- G.A.

Hon'ble Vikram D. Chauhan,J.

1. Learned A.G.A. submits that instructions have been received and has no objection in case the bail application is heard on merits.

2. Heard Sri Rakesh Kumar Singh and Mrs. Pragya Pandey, learned counsels for the applicant, learned A.G.A. for the State and perused the record.

3. It is submitted by learned counsel for the applicant that the applicant was the shareholder of the Kalpataru Build Tech. Corporation Pvt. Ltd. She was never the Director of the aforesaid Company and was earlier the Director of Kalpatru Mega Mart Ltd. As per the case of the prosecution, the deposit was made in Kalpatru Build Tech. Corporation Pvt. Ltd. for booking of flat. However, the aforesaid amount was not returned. No amount has been received by the applicant. The applicant has no role in the executive decision of the Kalpatru Build Tech. Corporation Pvt. Ltd. In similar cases lodged by different investors the applicant had already been enlarged on bail by a co-ordinate Bench of this Court by order dated 2.11.2023 passed in Criminal Misc. Bail Application No.46445 of 2023, which is a detailed judgment in this respect. The applicant claims parity. The applicant being mere a shareholder would not amount to the fact that the applicant was in any way in the decision making process of the Company. The shareholder has separate existence from the executive Directors of the Company and have limited liability. The applicant has explained criminal history in paragraph 13 and 14 of the affidavit. However, learned counsel for the applicant has fairly disclosed that there are several cases being lodged on the basis of same allegations against the applicant, which have been pending before this Court. Applicant is languishing in jail since 15.3.2023 and in case she is released on bail, she will not misuse the liberty of bail and will cooperate in the trial.

4. Learned A.G.A. for the State opposed the prayer for bail but does not dispute factual matrix of the case. However, he submits that the applicant was not the Director in the Kalpatru Build Tech. Corporation Pvt. Ltd. However, she was Director in the sister concern. He also does not dispute the claim of parity.

5. Learned AGA has pointed out the criminal antecedents of the Applicant. No material or circumstance has been brought to the notice of this court with regard to tampering of evidence or intimidating of witness in previous criminal cases. In **Ash Mohammad v. Shiv Raj Singh, (2012) 9 SCC 446**, the Apex Court in para 30 has observed:

"We may hasten to add that when we state that the accused is a history-sheeter we may not be understood to have said that a history-sheeter is never entitled to bail. But, it is a significant factor to be taken note of regard being had to the nature of crime in respect of which he has been booked."

6. In the case of **Prabhakar Tewari Vs. State of U.P. and another, 2020 (11) SCC 648**, the Hon'ble Supreme Court has observed that pendency of several criminal cases against an accused may itself cannot be a basis for refusal of bail.

7. In so far as criminal antecedents of the applicant is concerned, it is not the case of the State that applicant might tamper with or otherwise adversely influence the investigation, or that she might intimidate witnesses before or during the trial. The State has also not placed any material that applicant in past attempted to evade the process of law. If the accused is otherwise found to be entitled to bail, she cannot be denied bail only on the ground of criminal history, no exceptional circumstances on basis of criminal antecedents have been shown to deny bail to accused, hence, the Court does not feel it proper to deny bail to the applicant just on the ground that she had criminal antecedent.

8. The principle that Bail is a rule and Jail is an exception has been well recognised by Apex Court more specifically on the touch stone of Article 21 of the Constitution. The said principle has been reiterated by the Apex Court in **Satyendra Kumar Antil Vs Central Bureau of Investigation and another, 2022 (10) SCC 51**. Learned AGA has not shown any exceptional circumstances which would warrant denial of bail to the applicant.

9. No material, facts or circumstances has been shown by learned AGA that the accused may tamper with the evidence or witnesses or the accused is of such character that her mere

presence at large would intimidate the witnesses or that accused will use her liberty to subvert justice or tamper with the evidence.

10. It is settled principle of law that the object of bail is to secure the attendance of the accused at the trial. No material particulars or circumstances suggestive of the applicant fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like have been shown by learned AGA for the State.

11. Learned AGA for the State has not shown any material or circumstances that the accused/applicant is not entitled to bail in larger interests of the public or State.

12. Considering the facts and circumstances of the case, nature of offence, evidence, complicity of the accused, submissions of learned counsel for the parties and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.

13. Let the applicant **Mithlesh Singh** involved in Case Crime No.0607 of 2017, under Sections 406, 409, 420, 467, 468, 471, 120-B I.P.C., Police Station Farah, District Mathura be released on bail on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to the following conditions. In the event, the sureties are submitted by the applicant in pursuance to the order dated 2.11.2023 passed in Criminal Misc. Bail Application No.46445 of 2023, the aforesaid sureties shall be extended in the present case and no fresh surety will be obtained from the applicant:-

i. The applicant will not tamper with the evidence during the trial.

ii. The applicant will not pressurize/intimidate the prosecution witness.

iii. The applicant will appear before the trial court on the date fixed, unless personal presence is exempted and/or the applicant shall make herself available for interrogation by a police officer as and when required.

iv. The applicant shall not commit an offence similar to the offence of which she is accused, or suspected, of the commission of which she is suspected.

v. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

vi. The applicant shall not leave India without the previous permission of the Court.

vii. In the event, the applicant changes her residential address, the applicant shall inform the court concerned about new residential address in writing.

14. In case of breach of any of the above condition, the prosecution shall be at liberty to move bail cancellation application before this Court.

Order Date :- 1.12.2023
D. Tamang

Digitally signed by :-
DHIRENDRA TAMANG
High Court of Judicature at Allahabad