

Court No. - 72

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45778 of 2023

Applicant :- Manoj Kharwar @ Chanchal Singh

Opposite Party :- State of U.P.

Counsel for Applicant :- Praveen Kumar Singh, Rupesh Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal, J.

1. List has been revised.
2. Heard Sri Praveen Kumar Singh, learned counsel for the applicant, Sri Ram Mohit Yadav, learned A.G.A. for the State and perused the material placed on record.
3. Applicant seeks bail in Case Crime No.44 of 2023, under Section 8/20 N.D.P.S. Act, Police Station- Baburi, District- Chandauli, during the pendency of trial.
4. It is submitted by learned counsel for the applicant that the case of the applicant is at better footing to co-accused person Kamlesh Kharwar as the applicant was not arrested at the spot rather his name has come up in the statement of arrested co-accused person Kamlesh Kharwar, who has already been enlarged on bail by the co-ordinate Bench of this Court vide order dated 26.5.2023 passed in Criminal Misc. Bail Application No.23871 of 2023, which is not admissible in evidence. The applicant is languishing in jail since 19.9.2023. He further submitted that since the role of the applicant is identical to that of co-accused who has already been enlarged on bail, he is also entitled to be enlarged on bail on the ground of parity.
5. The prayer for bail has been vehemently opposed by learned A.G.A. However, the aforesaid factual aspect of the parity to the co-accused has not been disputed by him.
6. 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 applicant has made out a case for bail. The bail application is **allowed** on the ground of parity.

7. Let the applicant- **Manoj Kharwar @ Chanchal Singh**, who is involved in aforementioned case crime be released on bail on his 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 applicant shall not tamper with evidence.

(ii) The applicant 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 applicant 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 him in accordance with law.

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

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

Order Date :- 31.10.2023

Vikas

[Krishan Pahal, J.]