

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46087 of 2023

Applicant :- Mukesh Yadav

Opposite Party :- State of U.P.

Counsel for Applicant :- Vijay Shanker Singh, Kamla Singh

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma, J.

1. Heard counsel for the applicant and Sri Neeraj Kumar Sharma, learned AGA for the State-opposite party.
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. 296 of 2023, under Sections 307, 328, 363 and 201 of I.P.C., Police Station- Tamkuhiraj, District- Kushinagar, during the pendency of trial.
3. Counsel for the applicant submitted that the applicant was not named in the first information report. The name of the applicant was disclosed by the co-accused, Kanhaiya Pal in Police custody. The said statement, insofar as, it implicates the applicant is unreliable. The allegation of assault has been assigned to the named co-accused. Even in the statement of the victim under Section 164, there is no allegation against the applicant. The role of the applicant is clearly distinguishable from that of the co-accused, Kanhaiya Pal. The applicant is in jail since 13.09.2023, having no criminal history 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 first information report. The name of the applicant was disclosed by the co-accused, Kanhaiya Pal in Police custody. At this stage, there is no substantive evidence against the applicant. Further, the applicant has no criminal antecedents and has remained confined for more than one month 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 merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

6. Let the applicant **Mukesh Yadav**, involved in the aforesaid 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 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 :- 8.11.2023

Sachin Mishra