

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47337 of 2023

Applicant :- Irfan @ Fana @ Pahalwan

Opposite Party :- State of U.P.

Counsel for Applicant :- Rahul Kumar Tiwari, Sanjay Kr. Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma, J.

1. Supplementary affidavit filed by the counsel for the applicant, is taken on record.
2. Heard learned counsel for the applicant and Sri Neeraj Kumar Sharma, learned AGA for the State-respondent.
3. 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. 475 of 2005, under Sections 395, 397 IPC, Police Station Khatauli, District Muzaffar Nagar, during the pendency of trial.
4. Counsel for the applicant submits that the applicant was not named in the first information report and has been falsely implicated in the instant case. The name of the applicant was disclosed by co-accused Rafeeq Quarishi in police custody. The said statement insofar as it implicates the applicant is unreliable. No incriminating articles were recovered from the applicant. The criminal history of the applicant has been explained in para 3 of the supplementary affidavit. The applicant is in jail since 11.10.2022 and in case he is enlarged on bail, he will not misuse the said liberty.
5. Learned AGA has opposed the prayer for bail but could not satisfactorily dispute the aforesaid submissions from the record.
6. 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. The name of the applicant was disclosed by co-accused in police custody. At this stage, there is no substantive evidence against the applicant. The applicant has remained confined for more than one year 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.

7. Let the applicant **Irfan @Fana @ Pahalwan**, 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; and,

(iv) shall appear on first Sunday of every month at the Police Station concerned.

8. 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 :- 24.11.2023

Lbm/-