

Court No. - 72

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47254 of 2023

Applicant :- Shivam Kashyap

Opposite Party :- State of U.P.

Counsel for Applicant :- Rajesh Kumar

Counsel for Opposite Party :- G.A., Tufail Hasan

Hon'ble Krishan Pahal, J.

1. List has been revised.
2. Heard Sri Rajesh Kumar, learned counsel for the applicant, Shri Tufail Hasan, learned counsel for the informant, Sri Varun Pratap, learned A.G.A. for the State and perused the material placed on record.
3. Applicant seeks bail in Case Crime No. 291 of 2023, Under Sections 394, 411 IPC, Police Station South, District Firozabad, during the pendency of trial.
4. As per prosecution story, some unknown persons are stated to have committed theft in the house of the informant in the night of 3/4.5.2023 thereby taken away Rs.12,50,000/- cash from his house. The said FIR was instituted after seeing the CCTV footage, whereby, it was evident that three persons with muffled faces were loitering in the house.
5. Learned counsel for the applicant has argued that the applicant is absolutely innocent and has been falsely implicated in the present case. The applicant is known to the informant and was earlier on his servant. His name has come up later on in the statement of the informant recorded under Section 161 Cr.P.C. which further falsifies the story as it is mentioned in the FIR that all the three accused persons were having their faces muffled. The identification of the applicant is fake. The applicant has no previous criminal history to the present case. A case under Section 25 Arms Act has been instituted at the time of arrest in the present matter and false recovery of 3.5 lakh has been fastened on. Learned counsel has stated that subsequently a case under the U.P. Gangster Act has also been instituted against him. If otherwise case of the applicant is made out for bail, he cannot be kept languishing in jail on account of previous criminal antecedent. Several other submissions have been made on behalf of the applicant to demonstrate the falsity

of the allegations made against him. The circumstances which, as per counsel, led to the false implication of the applicant have also been touched upon at length. the applicant is languishing in jail since 10.05.2023. In case, the applicant is released on bail, he will not misuse the liberty of bail.

6. Learned counsel for the informant and learned A.G.A. has opposed the bail application.

7. After hearing the parties and taking into consideration the fact that the applicant was not named in the FIR and there is material contradiction in the statement of the informant recorded under Section 161 Cr.P.C. to that of FIR, I find it to be a fit case for bail. The bail application is allowed.

8. Let the applicant- **Shivam Kashyap**, 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.

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

10. 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 :- 24.11.2023

Mukesh Kr.

(Krishan Pahal,J.)