

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46353 of 2023

Applicant :- Zahid @ Chhote

Opposite Party :- State of U.P.

Counsel for Applicant :- Dinesh Kumar Mishra, Gousia Anjum

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, Sri V.P. Tripathi, learned A.G.A. for the State and perused the record.
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. 271 of 2023, under Sections 392, 120-B, 411 I.P.C., and Section 3/25 Arms Act, Police Station- Mandawar, District- Bijnor during pendency of the 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 incident is alleged to have occurred on 9.8.2023 and the first information report was lodged on 11.8.2023. The delay is fatal to the prosecution case. The informant in his statement before the police has narrated the entirely different version with regard to the incident. The said contradiction discredits the prosecution case. False recovery of Rs.28000/- has been shown from the applicant. There is no independent witness to the alleged recovery. It is next contended that the named co-accused Mohd. Aqdas @ Firoz has been granted bail by this Court vide order dated 10.10.2023 passed in Criminal Misc. Bail Application No. 42970 of 2023. The criminal history of the applicant has been explained in para 2 of the supplementary affidavit. The applicant is in jail since 12.8.2023. In case he is enlarged on bail, he will not misuse the said liberty.
5. Learned A.G.A. 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 first information report. The informant in his

statement before the police has narrated an entirely different version. There is no independent witness to the alleged recovery. Further, the named co-accused Mohd. Aqdas @ Firoz has been granted bail by this Court. The applicant has presently remained confined for more than three months and 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 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, **Zahid @ Chhote** involved in the aforesaid case be released on bail on his furnishing a personal bond and two sureties each of the like amount to the satisfaction of court concerned on the following conditions that:

- i. the applicant shall not tamper with the prosecution evidence;
- ii. the applicant shall not pressurize the prosecution witness;
- iii. the applicant shall appear on each and every date fixed by the trial court.

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
S.S.