

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46986 of 2023

Applicant :- Anwar Mohammad

Opposite Party :- State of U.P.

Counsel for Applicant :- Syed Khursheed Anwar Alvi, Mohd Umar Farooq

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma, J.

1. Heard learned counsel for the applicant and Sri V.P. Tripathi, learned AGA for the State-respondent.
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. 129 of 2021, under Sections 420, 467, 468, 471, 477-A, 409 and 120-B IPC, Police Station Jaria, District Hamirpur, during the pendency of trial.
3. In brief, the prosecution case states that the former Chairman, Nagar Panchayat, Sarila, District Hamirpur in collusion with clerk Ganga Prasad Yadav and Raghvendra Singh, misappropriated government funds during the year 2012-2017.
4. Counsel for the applicant contends that the applicant was not named in the first information report. The applicant is a contractor and is proprietor of M/s Diamond Tubewell firm, District Hamirpur. During the course of investigation, Investigating Officer recorded at C.D.-65 that certain amounts were credited in the account of the applicant through cheques. Parcha C.D.-65 is annexed as Annexure-9 to the bail application. Counsel for the applicant has drawn the attention of the Court towards the enquiry report of two members committee annexed as Annexure-11 to the bail application. As per the said report, the said cheques were deposited in the account of one Dinesh Kumar and M/s Jyoti Samaj Seva Sansthan, Sarila. It is contended that the applicant is not the beneficiary of the alleged illicit transactions. In the enquiry report, there is no allegation against the applicant. Neither the applicant was involved in misappropriation of government funds nor has committed any breach of trust nor has prepared any forged documents. The applicant is in jail since 14.08.2023 having no

criminal history 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 first information report. The report of two member enquiry committee shows that the cheque numbers mentioned at CD-65 were deposited in the bank accounts of other persons. The applicant is not the beneficiary of the alleged illicit transactions. At this stage, there is no substantive evidence against the applicant. Further, the applicant has remained confined for more than three months 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 applicant, **Anwar Mohammad**, involved in the aforesaid case 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.

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 :- 23.11.2023
Prajapati