

Court No. - 72

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47898 of 2023

Applicant :- Manish Jain

Opposite Party :- State of U.P.

Counsel for Applicant :- Ajay Kumar Vashistha

Counsel for Opposite Party :- G.A., Raj Kumar Kesari

Hon'ble Krishan Pahal, J.

1. List has been revised. Supplementary affidavit filed by learned counsel for the applicant is taken on record.
2. Heard Sri Ajay Kumar Vashistha, learned counsel for the applicant, Sri Raj Kumar Kesari, learned counsel for the informant and Sri R.P. Patel, learned A.G.A. for the State and perused the material placed on record.
3. Applicant seeks bail in Case Crime No. 193 of 2023, U/S 363, 311, 370(5) IPC, Police Station Bhelupur, District Varanasi, during the pendency of trial.
4. It is submitted by learned counsel for the applicant that similarly placed co-accused person, Mahesh Rana, Gudiya Devi and Santosh Saw have already been enlarged on bail by this Court vide orders dated 8.11.2023, 4.10.2023 and 9.11.2023 passed in Criminal Misc. Bail Application Nos. 40142 of 2023, 38526 of 2023 and 42631 of 2023 respectively. The applicant is languishing in jail since 23.5.2023. He further submitted that since the role of the applicant is identical to that of co-accused, who has already been enlarged on bail, he is also entitled to be enlarged on bail on the ground of parity.
5. The prayer for bail have been vehemently opposed by learned A.G.A. and learned counsel for the informant on the ground that the applicant has a criminal history of two cases.
6. Learned counsel for the applicant has stated that the said criminal history of the applicant stands explained in supplementary affidavit, as the said cases have been instituted subsequent to the present FIR. In support of his submission, learned counsel has placed much reliance upon the judgement of *Prabhakar Tewari*

Vs. State of U.P. and Another, 2020 (11) SCC 648, the Apex Court has observed that pendency of several criminal cases against an accused may itself cannot be a basis for refusal of bail.

7. Considering the facts and circumstances of the case, submissions made by learned counsel for the parties, the evidence on record, pending trial and in light of the judgement passed by this Court in *Nanha S/o Nabhan Kha vs. State of U.P., 1993 Crl.L.J. 938* and the judgement passed by the Apex Court in *Paras Ram Vishnoi vs. The Director, Central Bureau of Investigation, MANU/SCOR/22410/2021*, without expressing any opinion on the merits of the case, the Court is of the view that the applicants have made out a case for bail. The bail application is **allowed** on the ground of parity.

8. Considering the submissions made by learned counsel for the parties, this Court is of the view that the applicant has made out a case for grant of bail on the ground of parity.

9. Without expressing any opinion on the merits, the bail application is allowed. Let the applicant- **Manish Jain**, who is involved in aforementioned case crime number 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.

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

11. 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.

(Justice Krishan Pahal)

Order Date :- 21.11.2023\Shalini