

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47542 of 2023

Applicant :- Kishori

Opposite Party :- State of U.P.

Counsel for Applicant :- Krishna Kumar Shukla

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 Prateek Tyagi, 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 S.T. No. 703 of 2023 arising out of Case Crime No. 124 of 2019, under Section 395 IPC, Police Station Bisharatganj, District Bareilly, 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 surfaced after one and half years of the alleged incident. At this stage, there is no cogent evidence to link the applicant with the offence. False recovery of a country made pistol and a live cartridge has been shown from the applicant. There is no independent witness to the alleged recovery. The criminal history of the applicant has been explained in para 6 of the supplementary affidavit. It is next contended that the trial is moving at a snail's pace and is not likely to conclude early. The applicant is in jail since 05.01.2021. The applicant is not responsible for the delay in the trial. Inordinate delay in concluding the trial has led to virtually and indefinite imprisonment of the applicant without there being any credible evidence to implicate him in the offence and violates the rights of the applicant to a speedy trial. In case the applicant is enlarged on bail, he will not misuse the said liberty.
4. Learned AGA has opposed the prayer for bail but could not satisfactorily dispute the aforesaid submissions from the record.
5. 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 name of the applicant surfaced after one and half years of the alleged incident. At this

stage, there is no substantive evidence against the applicant. Further, the applicant has remained confined for more than two years and eleven months and 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.

6. Let the applicant **Kishori**, 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.

7. 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 :- 7.12.2023

Lbm/-