

Court No. - 72

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46746 of 2023

Applicant :- Kanhaiya Lal

Opposite Party :- State of U.P.

Counsel for Applicant :- Sarvesh Chaubey, Akhilesh Vishwakarma

Counsel for Opposite Party :- G.A., Ravish Chandra Srivastava, Vijay Kumar Ojha

Hon'ble Krishan Pahal, J.

1. List has been revised. Learned counsel for the informant is not present.
2. Heard Sri Sarvesh Chaubey, learned counsel for the applicant, Sri Shashikant Rai, learned A.G.A. for the State and perused the material placed on record.
3. Applicant seeks bail in Case Crime No.400 of 2018, under Sections 419, 420, 467, 468, 471, 120-B I.P.C., Police Station-Rohania, District- Varanasi, during the pendency of trial.
4. It is submitted by learned counsel for the applicant that similarly placed co-accused person, Mittu has already been enlarged on bail by Co-ordinate Bench of this Court vide order dated 31.5.2010 passed in Criminal Misc. Bail Application No.38773 of 2018. Learned counsel has stated that there is a criminal history of two subsequent cases of the applicant and he has yet to apply for bail in the said cases. The applicant is languishing in jail since 9.8.2023. 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 has been vehemently opposed by learned A.G.A. However, the aforesaid factual aspect of the parity to the co-accused has not been disputed by him.
6. 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 applicant has made out a case for bail. The bail application is **allowed** on the ground of parity.

7. Let the applicant- **Kanhaiya Lal**, 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.

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

9. 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 :- 16.11.2023

Vikas

[Krishan Pahal, J.]