

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47348 of 2023

Applicant :- Shivakant @ Ramu

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Lal Mani Singh, Raghuvir Sharan Singh

Counsel for Opposite Party :- G.A., Ashutosh Mishra, Shailendra Kumar Ojha

Hon'ble Vivek Varma, J.

1. Supplementary affidavit filed by counsel for applicant, is taken on record.
2. Heard learned Counsel for the applicant, Sri V.P. Tripathi, learned A.G.A. for the State and Sri Shailendra Kumar Ojha, counsel for the informant. 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. 558 of 2022, under Sections 323, 325, 324, 452, 506, 354 Kha, 34, 355, 308 I.P.C., and Section 9/10 POCSO Act, Police Station- Rasoolabad, District- Kanpur Dehat during pendency of the trial.
4. Counsel for the applicant submits that the applicant has been falsely implicated in the instant case. In the first information report seven persons including the applicant and three unknown persons are nominated. A vague and general role has been assigned to the applicant. The applicant has not been nominated as the principal offender, who assaulted the injured and acted indecently with the victim. It is next contended that there are inconsistencies in the statement of the victim under Section 161 Cr.P.C. and 164 Cr.P.C. Further the co-accused Sharad @ Happy and Vikas Agnihotri @ Shyam Ji have been granted bail by this Court vide orders dated 10.4.2023 & 23.11.2023 passed in Criminal Misc. Bail Application Nos. 3415 of 2023 & 46521 of 2023 respectively. Prior to the instant case the applicant was involved in Case Crime No.180 of 2014, under Section 147, 324, 323, 336, 427, 504, 506 I.P.C., P.S. Shivli, District Kanpur Dehat and in the said case the applicant has been granted bail by the trial court. The applicant is in jail since 16.8.2023. 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 a vague and general role has been assigned to the applicant. The applicant has not been nominated as a principal offender, who assaulted the injured and acted indecently with the victim. The co-accused Sharad @ Happy & Vikas Agnihotri @ Shyam Ji have been granted bail by this Court. Further 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, **Shivakant @ Ramu** Ji 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 :- 6.12.2023

Sharad/-