

Court No. - 72

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47940 of 2023

Applicant :- Sher Bahadur @ Prem Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Abhishek Kumar Jaiswal

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. List has been revised.
2. Heard Sri Abhishek Kumar Jaiswal, learned counsel for the applicant, Sri S.P. Pandey, learned A.G.A. for the State and perused the material placed on record.
3. Applicant seeks bail in Case Crime No.02 of 2022, under Sections 417, 420, 467, 468, 471, 411, 120-B I.P.C., Sections 66(C) & 66(D) of Information Technology (Amendment) Act and Section 36 & 42 of Aadhar Act, 2016, Police Station Cyber Crime, District Varanasi, during the pendency of trial.
4. It is submitted by learned counsel for the applicant that three laptops have been recovered from the possession of the applicant. Similarly placed co-accused person, Chandan Sagar Urf Chandan Kumar, Pankaj Kumar Yadav and Sushil Kumar have already been enlarged on bail by this Court vide orders dated 19.10.2023, 20.09.2023 and 22.09.2023 passed in Criminal Misc. Bail Application Nos.43267 of 2022, 38803 of 2023 and 41173 of 2023 respectively. The applicant is languishing in jail since 21.07.2023. 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- **Sher Bahadur alias Prem Kumar**, 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 :- 8.11.2023

Manoj