

Court No. - 72

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48088 of 2023

Applicant :- Umesh Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Abhishek Kumar Srivastava, Shiv Kumar, Vivek Kumar Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. List has been revised.
2. Heard Sri Abhishek Kumar Srivastava, learned counsel for the applicant, Sri Anil Kumar Singh, learned A.G.A. for the State and perused the material placed on record.
3. Applicant seeks bail in Case No.15450 of 2023, arising out of Case Crime No.1023 of 2022, under Sections 420, 409, 506 I.P.C., Police Station Civil Lines, District Moradabad, during the pendency of trial.
4. Learned counsel for the applicant has submitted that the applicant has been falsely implicated in this case. The applicant is the Manager of the company. Learned counsel has stated that similarly placed co-accused person Sarita Kesarwani, who happens to be the Director of the said company, has already been enlarged on bail by Co-ordinate Bench of this Court vide order dated 2.8.2023 passed in Criminal Misc. Bail Application No.32683 of 2023.
5. Learned counsel for the applicant has further stated that the criminal history of three cases assigned to the applicant stands explained except the case under the Gangster Act as he could not apply for bail lest he is released on bail in the present case. The applicant is languishing in jail since 1.10.2023. 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.
6. Learned counsel for the applicant has stated that if otherwise the case of bail is made out then the applicant cannot be kept languishing in jail on account of his criminal antecedents. In ***Pawan Kumar Pandey vs. State of U.P.*** reported in ***[2007 (1) JIC 680 (Allahabad)]***, it has been opined by this very Court

that if the accused is otherwise entitled to bail, the same should not be refused on the ground of his criminal antecedents.

7. 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.

8. 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.

9. Let the applicant- **Umesh 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.

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.

Order Date :- 21.11.2023
Vikas

[Krishan Pahal, J.]