

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 49498 of 2023

Applicant :- Mohd Akeel @ Akib @ Asif And 2 Others

Opposite Party :- State of U.P.

Counsel for Applicant :- Vipul Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma,J.

1. Supplementary affidavit filed by the counsel for the applicants, is taken on record.
2. Heard learned counsel for the applicants and Sri V.P.Tripathi, 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 applicants on bail in Case Crime No. 380 of 2022, under Sections 457, 380 IPC, Police Station Phoolpur, District Azamgarh, during the pendency of trial.
4. Counsel for the applicants submits that the applicants were not named in the first information report and have been falsely implicated in the instant case. The names of the applicants were disclosed by the co-accused Arshad @ Bahuda in police custody. The said statement insofar as it implicates the applicants are unreliable. No incriminating articles were recovered from the possession of the applicants. Except the confessional statements of the applicants in police custody, there is no cogent evidence against them. It is next contended that co-accused Arshad @ Bahuda and Meraj have been granted bail by this Court vide orders dated 30.05.2023 and 27.04.2023 passed in Criminal Misc. Bail Application Nos. 23106 of 2023 and 18896 of 2023. The criminal history of the applicants no. 1, 2 and 3 have been explained in paragraph nos. 4, 5 and 6 respectively of the supplementary affidavit. The applicants are in jail since 22.02.2023 and in case they are enlarged on bail, they will not misuse the said liberty.
4. Learned A.G.A. 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 applicants were not named in the first information report. The name of the applicants were disclosed by the co-accused Arshad @ Bahuda in police custody. Except the confessional statements of the applicants in police custody, there is no substantive evidence against them. Co-accused Arshad @ Bahuda and Meraj have been granted bail by this Court.
6. Insofar as the criminal antecedents of the applicants are concerned, it is not the case of the State that applicants might tamper with or otherwise adversely

influence the investigation, or that he might intimidate witnesses before or during the trial. The State has also not placed any material that applicants in past attempted to evade the process of law. In the opinion of this Court, if the accused are otherwise found to be entitled to bail, they cannot be denied bail only on the ground of criminal history, when no exceptional circumstances on the basis of criminal antecedents have been shown to deny bail to accused. Hence, the Court does not feel it proper to deny bail to the applicants just on the ground that they had criminal antecedents.

7. In **Ash Mohammad v. Shiv Raj Singh, (2012) 9 SCC 446**, the Apex Court in para- 30 has observed as under:

"We may hasten to add that when we state that the accused is a history-sheeter, we may not be understood to have said that a history-sheeter is never entitled to bail. But, it is a significant factor to be taken note of regard being had to the nature of crime in respect of which he has been booked."

8. In the case of **Prabhakar Tewari v. State of U.P. and another, 2020 (11) SCC 648**, the Hon'ble Supreme Court has observed that pendency of several criminal cases against the accused may itself cannot be a basis for refusal of bail.

9. Further, the applicants have remained confined for more than nine months and there is no hope of early conclusion of trial, hence, without commenting on the merits of the case, I am of the opinion that the applicants are entitled to be enlarged on bail.

10. Let the applicants- **Mohd. Akeel @ Akib @ Asif, Shakeel @ Bheema and Shahzade @ Chhedi** involved in the aforesaid case be released on bail on their furnishing a personal bond and **two heavy sureties** (in view of criminal history) each in the like amount to the satisfaction of the court concerned subject to conditions that they:

(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;

11. 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

Lbm/-