

Court No. - 72

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 49877 of 2023

Applicant :- Mohd Saif

Opposite Party :- State of U.P.

Counsel for Applicant :- Azhar Hussain, Shaban Ahmad

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal, J.

1. Supplementary affidavit has been filed on behalf of the applicant in Court today, which is taken on record.

2. List has been revised.

3. Heard Sri Shaban Ahmad, learned counsel for the applicant, Sri Anjani Kumar, learned A.G.A. for the State and perused the material placed on record.

4. Applicant seeks bail in Case Crime No.134 of 2023, under Section 147, 149, 307, 403, 120-B IPC, Police Station Kaundhiyara, District Allahabad, during the pendency of trial.

5. It is submitted by learned counsel for the applicant that applicant is not named in the FIR and similarly placed co-accused person, Mohd. Nayab has already been enlarged on bail by this Court vide order dated 13.10.2023 passed in Criminal Misc. Bail Application No. 39091 of 2023. The applicant is languishing in jail since 01.07.2023. 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. Bail application of the applicant in two cases is pending and in other cases, he has been bailed out.

6. 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.

7. 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.

8. Let the applicant- Mohd Saif, 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.

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

10. 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 :- 30.11.2023

Priya