

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 49552 of 2023

Applicant :- Irshad

Opposite Party :- State of U.P.

Counsel for Applicant :- Anil Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma,J.

1. Heard learned counsel for the applicant and Sri Neeraj Kumar Sharma, learned AGA for the State-respondent.
2. 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. 439 of 2022, under Sections 380, 411 IPC, Police Station - Sadar Bazar, District- Saharanpur, during the pendency of trial.
3. Counsel for the applicant submits that the applicant was not named in the First Information Report and has been falsely implicated in the present case. The applicant along with four other persons were arrested in Case Crime No. 48/2023, Police Station- Janakpuri, District- Saharanpur on 07.03.2023 and has been falsely implicated in the instant case. False recovery of ornaments of white and yellow metal has been shown from the possession of the applicant. There is no independent witness to the alleged recovery. Criminal history of the applicant has been explained in para no. 11 of the affidavit. The applicant is in jail since 08.03.2023 and in case he is enlarged on bail, he will not misuse the said liberty.
4. Learned AGA 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 applicant was not named in the FIR. There is no independent witness to the alleged recovery. At this stage, there is no substantive evidence against the applicant. The applicant has remained confined for more than eight months and after submission of the charge-sheet 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 delay the trial 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.

6. Let the applicant **Irshad**, involved in the aforesaid case be released on bail on his furnishing a personal bond and two heavy sureties each in the like amount to the satisfaction of the court concerned subject to the conditions that he:

(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.

7. 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/-