

Court No. - 77

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 49883 of 2023

Applicant :- Asghar Ali @ Laddan Kabadi

Opposite Party :- State of U.P.

Counsel for Applicant :- Mohd. Mobin Ansari

Counsel for Opposite Party :- G.A.,Anurag Mishra

Hon'ble Mrs. Renu Agarwal,J.

1. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.
2. The present first bail application under Section 439 Cr.P.C. has been filed on behalf of the applicant in Case Crime No. 239 of 2023 under Sections 323, 506, 448, 386, 504 I.P.C. Police Station Kareli, District Prayagraj with the prayer to enlarge him on bail.
3. Learned counsel for the accused-applicant submitted that the applicant is innocent and has been falsely implicated in the instant case due to malafide intentions. Allegations levelled as per the F.I.R. is that applicant has illegally encroached the land of the informant and threatened the informant of dire consequences if the informant enters in the alleged disputed property. It is submitted that the applicant is the tenant of the alleged premises and he is regularly paying Rs. 30,000/- as rent to the informant. It is further submitted that the informant wants to get the alleged property vacated without following the due process of law. It is next submitted that prior to the present incident, informant had also created chaos and tried to vacate the said premises. It is contended that on

28.07.2023 A.C.P., Kareli, Prayagaraj initiated proceeding under Section 107/116 Cr.P.C. against both the parties on the basis of report of P.S. Kareli, Prayagraj and, later on, on the date of incident, informant again tried to encroach the said land. It is next contended that co-accused Samad @ Samad Ali has been granted the liberty of anticipatory bail by co-ordinate Bench of this Court vide order dated 06.12.2023 passed in Criminal Misc. Anticipatory Bail Application No. 13026 of 2023. It is further contended that there is no injury report on record, applicant is languishing in jail since 21.10.2023 having no criminal history to his credit apart from the present case and if he is granted the liberty of bail he will not misuse the same and he is ready to furnish his sufficient sureties, bonds and personal bonds and shall co-operate in the trial.

4. On the other hand, learned AGA has opposed the prayer of bail but could not controvert the aforesaid arguments as advanced by learned counsel for the applicant.

5. Considering the fact that the dispute is of civil nature which has been given the colour of criminal offence, a civil suit between the parties is pending before the court below, applicant is paying Rs. 30,000/- as rent to the informant and it is admitted that till August applicant has paid his rent to the informant, applicant has no criminal history to his credit, applicant is languishing in jail since 21.10.2023 and without expressing any opinion on the merits of the case, accused-applicant is liable to be released on bail.

6. Let applicant **Asghar Ali @ Laddan Kabadi** be released on bail in the above

case crime number and on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of Court concerned with the following conditions :-

(i) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(ii) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the court on the date fixed in such proclamation, then the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

(iv) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) 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.

(v) The applicant shall also furnish an undertaking from the sureties that the properties (movable/immovable) which are the basis of accepting the surety, shall not be disposed of by them till the conclusion of trial.

(vi) The applicant shall also give an undertaking to the effect that he will not change his address without prior intimation to the trial court concerned.

(Renu Agarwal,J.)

Order Date :- 11.12.2023

Karan