

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 49820 of 2023

Applicant :- Mohammad Umar

Opposite Party :- State of U.P.

Counsel for Applicant :- Salman Ahmad

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma,J.

1. Heard counsel for the applicant and Sri V.P. Tripathi, learned A.G.A. 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. 244 of 2023 under Sections 457, 380 and 411 of I.P.C., Police Station- Kotwali Konch, District- Jalaun, during pendency of the trial.
3. Counsel for the applicant submits that the applicant was not named in the first information report. The alleged vehicle was not identified on the basis of the C.C.T.V. footage. Only on the information of an informer, the applicant along with the co-accused, Rajendra Pandey were arrested and has been falsely implicated in the instant case. False recovery has been shown from the joint possession of the applicant and the co-accused. There is no independent witness to the alleged recovery. The recovered pea seeds cannot be connected with the offence. It is next contended that the identically placed co-accused, Rajendra Pandey, has been granted bail by this Court vide order dated 30.11.2023 passed in Criminal Misc. Bail Application No. 49851 of 2023. The applicant claims parity. The applicant is in jail since 09.10.2023, having no criminal history and in case he is enlarged on bail, he 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 applicant was not named in the first information report. There is no independent witness to the alleged recovery. Identically placed co-accused, Rajendra Pandey, has been granted bail by this Court. At this stage, there is no substantive evidence against the applicant. Further, the applicant has no criminal antecedents and has remained confined

for more than two months and 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- **Mohammad Umar**, involved in the aforesaid case be released on bail on his furnishing a personal bond and two sureties each of the like amount to the satisfaction of court concerned on the following conditions that:

- i. the applicant shall not temper with the prosecution evidence;
- ii. the applicant shall not pressurize the prosecution witness;
- iii. the applicant shall appear on each and every date fixed by the trial court.

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 :- 13.12.2023
Sachin Mishra