

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 50101 of 2023

Applicant :- Nishant

Opposite Party :- State of U.P.

Counsel for Applicant :- Vivek Kumar Yadav, Mukesh Chandra Gupta, Rajendra Kumar, Shubham Prakash Gupta

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma, J.

1. Heard learned counsel for the applicant and Sri Dinesh Tiwari, 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.245 of 2023, under Section 392 IPC, Police Station Bhawanpur, District Meerut, during the pendency of trial.
3. Counsel for the applicant submits that the applicant was not named in the first information report. The incident is alleged to have occurred on 13.08.2023 and the first information report was lodged on 16.08.2023. The delay in the facts of the present case is fatal to the prosecution case. The applicant and three others were arrested in Case Crime No. 235 of 2023, under Section 307 IPC and Section 3/4/25 Arms Act, Police Station Ganganagar, District Meerut and has been falsely implicated in the instant case. Except the confessional statement of the applicant in police custody, there is no cogent evidence to link the applicant with the offence. It is next contended that co-accused Halchl @ Sukendra has been granted bail by this Court vide order dated 24.11.2023 passed in Criminal Misc. Bail Application No. 45742 of 2023. The applicant claims parity. Prior to the instant case, the applicant does not have any criminal history, however, after his arrest in the instant case, he has been implicated in other cases. The applicant is in jail since 16.08.2023 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 first information report. The first information report has been lodged belatedly. Except, the confessional statement of the applicant in police custody, at this stage, there is no substantive evidence against him. The co-accused Halchal

@ Sukendra has been granted bail by this Court. Further, the applicant has remained confined for more than three 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 **Nishant**, involved in the aforesaid case 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 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 :- 11.12.2023

Lbm/-