

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 50001 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 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. 185 of 2023 under Sections 394, 34 I.P.C., Police Station- Pallavpuram, District- Meerut, during pendency of the 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 12.08.2023. The first information report was lodged on 15.08.2023. The delay is fatal to the prosecution case. The applicant along with three others were arrested on 16.08.2023 in Case Crime No. 235 of 2023, P.S. Ganga Nagar, District- Meerut, under Section 307 I.P.C. & Sections 3/4/25 of Arms Act and has been falsely implicated in the instant case. False recovery of a country made pistol, a live cartridge and other items has been shown from the applicant. There is no independent witness to the alleged recovery. Except the confessional statement of the applicant in Police custody, at present, there is no cogent evidence to link the applicant with the alleged offence. It is next contended that the identically placed co-accused, Bharat and Ashish, have been granted bail by this Court in Criminal Misc. Bail Application Nos. 46032 of 2023 and 46009 of 2023 vide orders dated 31.10.2023 and 31.10.2023 respectively. The applicant claims parity. Prior to the instant case the applicant does not have any criminal history, however after his arrest he has been implicated in other cases. The applicant is in jail since 16.08.2023. 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 facts from the record.

5. Having heard learned 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 was lodged belatedly. There is no independent witness to the alleged recovery. Identically placed co-accused, Bharat and Ashish, have been granted bail by this Court. Further, the applicant has remained confined for almost four 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 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 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; and,
- 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

Aditya