

Court No. - 77

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 50221 of 2023

Applicant :- Dharmendra Singh Chauhan Alias D.S Chauahan

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Varad Nath

Counsel for Opposite Party :- G.A., Shreya Gupta

Hon'ble Mrs. Renu Agarwal, J.

1. Counter affidavit filed today is taken on record.
2. Heard learned counsel for the applicant, learned counsel for the informant as well as learned A.G.A. for the State and perused the record.
3. The present first bail application under Section 439 Cr.P.C. has been filed on behalf of the applicant in Case Crime No. 1053 of 2023 under Sections 409 and 420 I.P.C. Police Station Highway, District Mathura with the prayer to enlarge him on bail.
4. 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 a sum of Rs. 7,18,355/- has been misappropriated from the residents of Shri Radha Vintage towards the payment of electricity dues by present applicant and co-accused Saurav Kumar who was working as an electrician in the said society. The said amount has not been deposited to the company, namely, SJP Residency Consortium Limited which owns the said residential society. It is submitted that the applicant is the site in-charge of

the Shri Radha Vintage Society. It is further submitted that the applicant is neither the electrician nor he was assigned the duty of collecting amount towards the electricity consumption and it was the co-accused who worked as electrician in the said society and was assigned the duty of collecting amount towards the electricity bills. It is submitted that initially F.I.R. was registered under Section 408 I.P.C., however, later on Section 408 has been removed and Section 409 and 420 I.P.C. have been added. It is contended that only complicity which has been drawn against the applicant during investigation is that certain WhatsApp messages were found to have been exchanged between the applicant and co-accused-Saurav Kumar whereby the applicant had requested him to make some transaction on his behalf to others. The deponent assumes that the money involved in these transactions has been treated to be part of the proceeds of the alleged crime. It is further contended that applicant is not a tech-savy person and sometimes the applicant requested the co-accused to make such payments on his behalf which he would ultimately be reimbursed to co-accused Saurav Kumar in cash. It is next contended that the applicant is working as a site in-charge of the said Shri Radha Vintage Society since last nine years and he is doing his duty sincerely and with due diligence. The case is of civil nature and the money said to have been misappropriated could be reimbursed. Applicant is languishing in jail since 13.10.2023 having no criminal history to his credit and applicant is ready to deposit the amount said to have been misappropriated 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.

5. Per contra, learned counsel for the informant has submitted that even though it was the co-accused Saurav Kumar who was primarily responsible for collecting electricity bill payments from the society residents, it was applicant on whose instructions the co-accused had been acting throughout. It is submitted that WhatsApp messages repetitively requesting for transfer of funds of approximately Rupees 2.7 Lacs over a span of six months from the co-accused whose salary was a mere Rs. 15,010/- and there is no evidence of any repayment made by applicant to the co-accused, by any means and opposed the prayer for bail.

6. Considering the fact that the applicant is the site-incharge of Shri Radha Vintage Society and co-accused Saurav Kumar who was electrician was entrusted the duty of collection of electricity dues from the residents of the said society, Rs. 2,70,000/- is said to have been transferred in the accounts of different persons on the direction of applicant and WhatsApp messages are enclosed with the counter affidavit, case is triable by Magistrate, case is of civil nature, applicant is ready to deposit Rs. 2,70,000/- in the said society at the time of his release, applicant having no criminal history to his credit and without expressing any opinion on the merits of the case, accused-applicant is liable to be released on bail. **The case of the present applicant is distinguished from that of co-accused Saurav Kumar.** In view thereof, instant bail application is **allowed**.

7. Let applicant **Dharmendra Singh Chauhan @ D.S Chauhan** 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 **subject to**

the condition that applicant shall deposit Rs. 2,70,000/- in the said society. The applicant shall also abide by 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

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