

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 51069 of 2023

Applicant :- Ashish Jaiswal

Opposite Party :- State of U.P.

Counsel for Applicant :- Kamlesh Kumar Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma,J.

1. Sri Pratik Chandra, Ms. Priyanka Sharma and Sri Gokul Sharma, Advocates have filed their Vakalatnama on behalf of the informant. The same is taken on record.

2. Heard learned counsel for the applicant, Sri Pratik Chandra, learned counsel for the informant and Sri V.P.Tripathi, learned AGA for the State-respondent.

3. 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. 1354 of 2023, under Sections 406, 420, 467, 468, 471 IPC and Section 66-D of Information Technology Act, Police Station Indirapuram, District Ghaziabad, during the pendency of trial.

4. Counsel for the applicant submits that the applicant was not named in the first information report and has been falsely implicated in the instant case. The name of the applicant was disclosed by co-accused Ayodhya in police custody. The said statement insofar as it implicates the applicant is unreliable. The amount was credited in the account of Vikas Nagar, Ayodhya and S.K.B. Enterprises. False recovery of ATM cards has been shown from the applicant. There is no independent witness to the alleged recovery. No amount has been credited in the account of the applicant. The applicant is not a beneficiary of the illicit transaction. At present there is no cogent evidence to link the applicant with the offence. It is next contended that co-accused Umesh Shukla and Satyam Kumar Gaur have been granted bail by the trial court vide order dated 24.11.2023 passed in Bail Application No. 7914 of 2023 (Computer Registration No. 11941 of 2023). Prior to the instant case the applicant was involved in Case Crime No. 90 of 2019, under Sections 419, 420, 411 IPC and Section 66 I.T (Amendment) Act, Police Station Vibhutikhand, District Lucknow. In the said case the applicant has been enlarged on bail by this Court vide order dated 03.07.2019 passed in Criminal Misc. Bail Application No. 4097 of 2019. The applicant is in jail since

14.10.2023 and in case he is enlarged on bail, he will not misuse the said liberty.

5. Learned AGA and learned counsel for the informant have opposed the prayer for bail but could not satisfactorily dispute the aforesaid submissions from the record.

6. Having heard counsel for the parties and having perused the record, this Court prima facie finds that the applicant was not named in the FIR. The name of the applicant was disclosed by co-accused Ayodhya in police custody. No amount has been credited in the account of the applicant. The applicant is not a beneficiary of the illicit transaction. There is no independent witness to the alleged recovery. At present, there is no substantive evidence to link the applicant with the offence. The co-accused Umesh Shukla and Satyam Kumar Gaur have been granted bail by the trial court vide order dated 24.11.2023. Further, the applicant has remained confined for more than one and half month 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.

7. Let the applicant **Ashish Jaiswal**, 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.

8. 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 :- 7.12.2023

Lbm/-