Court No. - 77

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 50616 of 2023

Applicant :- Surendra
Opposite Party :- State of U.P.
Counsel for Applicant :- Virpratap Singh,Ranjeet Singh
Counsel for Opposite Party :- G.A.

Hon'ble Mrs. Renu Agarwal,J.

Heard learned counsel for applicant, learned A.G.A. for State and perused the materials available on record.

The present first bail application has been filed on behalf of the applicant in Case Crime No.238 of 2023, under Sections 379, 411, 41, 413, 420, 467, 468, 471 IPC, Police Station Rath, District Hamirpur with the prayer to enlarge him on bail.

Learned counsel for the accused-applicant submitted that the applicant is innocent and has been falsely implicated in the present case due to ulterior motive. It is further submitted that the applicant is named in the FIR along with four other co-accused and co-accused-Akhilesh Kuchbadhiya, who has already been granted bail by a co-ordinate Bench of this Court, vide order dated 29.08.2023, passed in Criminal Misc.Bail Application No. 36771 of 2023 and another co-accused-Pavab @ Pavan Kuchbadhiya, who has already been granted bail, vide order dated 5.10.2023, passed in Criminal Misc. Bail Application No. 28734 of 2023. It is further submitted that in this case, eight motorcycles are said to have been recovered from the joint possession of five accused along with the present accused. It is further submitted that there is no independent witness of the recovery that has been shown against the applicant. It is further submitted that the applicant has the criminal history of 13 cases apart from the present case, which have been explained by the applicant in paragraph Nos. 26 (a), (b) (c) (d) (e) (f) (g) (h) and in seven cases, the applicant has been enlarged on bail by the court below. Applicant is languishing in Jail since 20.05.2023 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.

On the other hand, learned AGA has opposed the prayer of bail but

could not controvert the aforesaid arguments as advanced by learned counsel for the applicant.

Considering the facts and circumstance of the present case, there is no public witness of the alleged recovery, co-accused Akhilesh Kuchbadhiya and Pavab @ Pavan Kuchbadhiya in similar circumstances have been enlarged on bail, case is triable by Magistrate, case is squarely covered with the judgment passed by the Hon'ble Supreme Court in the case of Satender Kumar Antil v. Central Bureau of Investigation, reported in 2021 (10) SCC 773, applicant has criminal history of 13 cases and seven of them, he has been enlarged on bail and rest of the criminal history is well explained and without expressing any opinion on the merits of the case, accused-applicant is liable to be released on bail.

Let applicant-Surendra 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 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.

(vii) In case the applicant is found involved in cases of like nature, this bail shall stands automatically cancelled and the learned court below is at liberty to take coercive action against the applicant.

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[Renu Agarwal,J.]

Order Date :- 28.11.2023
Akram

Digitally signed by :-
MOHD AKRAM
High Court of Judicature at Allahabad