

Court No. - 75

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 50957 of 2023

Applicant :- Siyaram Upadhyay

Opposite Party :- State of U.P.

Counsel for Applicant :- Niraj Kumar Dwivedi, Ashish Kumar Dwivedi

Counsel for Opposite Party :- G.A., Abhishek Chandra, Zeeshan Mazhar

Hon'ble Umesh Chandra Sharma, J.

1. Heard learned counsel for the applicant, learned AGA for the State-opposite party and perused the record.
2. The instant bail application, under Section 439 Cr.P.C, 1973, has been filed with a prayer to enlarge the applicant on bail in Case Crime No. 203 of 2021, under Sections 419, 420, 467, 468, 471, 120-B, 504, 506 I.P.C, Police Station- Suriyawan, District Bhadohi, during the pendency of trial.
3. Counsel for the applicant submitted that the accused-applicant has been falsely implicated. Learned counsel for the applicant further contended that the applicant is languishing in jail since 16.08.2023. The property-in-question *Usar Gaon Sabha* land was obtained by the agricultural *Patta* of its part land area 17 *Biswa* of *Khasra* No. 176 area five *Biswa* of *Khasra* No. 177/2 on 22.01.1980, but the informant claimed the aforesaid land on the basis of agricultural *Patta* dated 15.08.1992, thus both the parties are claiming the property-in-question as their agricultural *Pattas* land, the applicant is in possession though his name has not been entered in the revenue record. The name of the informant has also not been recorded against the property-in-question. For the first time on 05.08.2021, the S.D.O. Gyanpur (Sant. Ravi Dass Nagar), Bhadohi, directed the concerned officials to enter the name of the informant and has also declared the informant to be *Bhumidhar* with transferable rights without any basis in arbitrary manner. The applicant has also filed a correction application for deleting the name of the informant and entering his name under Section 38 (1) of the U.P. Revenue Court. During the pendency of the correction application of the grand father of the applicant, the informant got the F.I.R registered on the basis of an application moved under

Section 156 (3) Cr.P.C. The informant is a politically strong person. The I.O. deleted the Sections 467 and 458 I.P.C. The I.O. has submitted the charge-sheet without any fare and proper investigation. The applicant is an old person and he is aged about 78 years and having old age disease suffering from Glaucoma. The informant has also filed an injunction suit in the Court of Civil Judge (Junior Division), Gyanpur, Bhadohi against the applicant and his family members and has got interim injunction in O.S No. 1333 of 2021. The wife of the applicant Smt. Gayatri Devi has also filed an original suit no. 1067 of 2021 for injunction. Though, the interim injunction has not been granted in favour of the applicant's wife, but the *Amin* Commissioner has submitted a report showing the possession of the applicant over the land-in-question. The disputes relates to a civil in nature for which both the parties have filed civil suits against the each other. No specific role of the applicant has been mentioned in the complaint. The son of the applicant (Tej Dhar) has already been granted bail by the A.S.J. Court No. 1, Bhadohi at Gyanpur. The applicant has no previous criminal antecedent to his credit. There is no possibility of the applicant of fleeing away from the judicial process or tempering with the witness and with the evidence.

4. It is next contended that the co-accused- Abhay Kumar having identical role, has been granted bail by the Coordinate Bench of this Court in ***Criminal Misc. Bail Application No. 47180 of 2023***. Copy of the bail order provided by the learned counsel for the applicant is taken on record.. The applicant claims parity. The applicant is in jail since 16.08.2023. In case, he is enlarged on bail, he will not misuse the said liberty.

5. Considering the nature, old age diseases of the applicant and the period of incarceration and that the civil litigation is going on between the parties, the bail application is deserved to be allowed.

6. Learned AGA has opposed the prayer for bail but could not satisfactorily dispute the aforesaid submissions from the record.

7. Having regard to the submissions made but without commenting on merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

8. Let the applicant- **Siyaram Upadhyay**, involved in the aforesaid case crime 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;
- (iii) shall not pressurize the prosecution witnesses.

9. 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 :- 29.11.2023

Vinod / Shahroz.