

Court No. - 77

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 51386 of 2023

Applicant :- Smt. Musaiyyada And Another

Opposite Party :- State of U.P.

Counsel for Applicant :- Sushil Kumar Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Mrs. Renu Agarwal,J.

1. Heard learned counsel for the applicants, learned A.G.A. for the State and perused the material brought on record.

2. The present application under Section 439 Cr.P.C has been filed on behalf of the applicants seeking bail in Case Crime No.298 of 2023 under Section 3/5/8 Cow Slaughter Act, Police Station Jansath, District Muzaffar Nagar.

3. Learned counsel for the accused-applicants submitted that the applicants are innocent and have been falsely implicated in the instant case due to ulterior motives. Only allegation against the applicants is that they have hidden the meat in the pile of chaff. No allegation of slaughtering/cutting was levelled against the applicants and no cutting weapon was recovered from their possession. The name of applicants surfaced on the basis of confessional statement of co-accused Kallu, who was arrested on the spot. The co-accused Kallu stated in his confessional statement that applicants were selling the meat on door to door basis. Applicant no.2 namely Smt. Afsha was found pregnant at the time of her arrest. Apart from the present case the applicants have no previous criminal history, as mentioned in para-20 of the affidavit filed in support of bail application. The applicants are languishing in jail since 08.11.2023 having no criminal history and in case they are granted bail, they will not misuse the liberty and would cooperate in the trial proceedings.

4. On the other hand, learned AGA has opposed the prayer for bail but could not controvert the above mentioned facts.

5. Considering the facts and circumstances of the case and taking into account that applicants are not found in slaughtering in any way, no cutting weapon was recovered from their possession or pointing out, there is no public witness against the applicants, the only allegation against them that they were selling the meat on door to door basis, applicant no.2 namely Smt. Afsha was found pregnant at the time of her arrest, apart from the present case the applicants

have no previous criminal history, as mentioned in para-20 of the affidavit filed in support of bail application, applicants are languishing in jail since 08.11.2023 and undertakes that in case they are enlarged bail, they will not misuse the liberty and would cooperate in the trial proceedings, without expressing any opinion on the merit of the case, it would be appropriate to enlarge the accused-applicants on bail. **The case of co-accused Kallu, Nazakat, Munna and Mohd. Kaif, are distinguished from the case of present applicants.**

6. Let applicant **Smt. Musaiyyada and Smt. Afsha** be released on bail in the above case crime number 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 applicants shall file an undertaking to the effect that they 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 applicants shall remain present before the trial court on each date fixed, either personally or through their counsel. In case of their absence, without sufficient cause, the trial court may proceed against them under Section 229-A of the Indian Penal Code.

(iii) In case, the applicants misuses the liberty of bail during trial and in order to secure their presence proclamation under Section 82 Cr.P.C. is issued and the applicants 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 applicants 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 them in accordance with law.

(v) The applicants 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 applicants shall also give an undertaking to the effect that they will not change their address without prior intimation to the trial court concerned.

(Renu Agarwal,J.)

Order Date :- 1.12.2023/VKG