

Court No. - 72

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 52549 of 2023

Applicant :- Godhan Mahato

Opposite Party :- State of U.P.

Counsel for Applicant :- Ashish Pandey, Bipul Pandey, Nikil Pathak

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal, J.

1. List has been revised.
2. Heard Sri Nikil Pathak, learned counsel for the applicant, Sri R.P. Patel, learned A.G.A. for the State and perused the material placed on record.
3. Applicant seeks bail in Session Trial No.915 of 2023, arising out of Case Crime No.478 of 2022, under Sections 379, 411, 413, 34 I.P.C., Police Station Kasya, District Kushinagar, during the pendency of trial.
4. It is submitted by learned counsel for the applicant that similarly placed co-accused persons, Rajkumar Singh, Aamod Singh and Manjesh Singh, have already been enlarged on bail by the Co-ordinate Bench of this Court vide orders dated 20.3.2023, 2.3.2023 and 26.5.2023 passed in Criminal Misc. Bail Application Nos. 11970 of 2023, 5302 of 2023 and 21017 of 2023, respectively. The applicant is languishing in jail since 8.10.2023. He further submitted that since the role of the applicant is identical to that of co-accused who have already been enlarged on bail, he is also entitled to be enlarged on bail on the ground of parity.
5. Learned counsel for the applicant has further stated that the criminal history of three cases assigned to the applicant has been explained and one case under the Gangster Act has been instituted and another case has been instituted at the time of arrest in the present matter. In support of this submission, learned counsel has placed much reliance upon the judgment of ***Prabhakar Tewari Vs. State of U.P. and another, 2020 (11) SCC 648***, wherein the Apex Court has observed that pendency of several criminal cases against an accused itself cannot be a basis for refusal of bail, if otherwise his case of bail is made out.

6. The prayer for bail has been vehemently opposed by learned A.G.A. However, the aforesaid factual aspect of the parity to the co-accused has not been disputed by him.

7. Considering the facts and circumstances of the case, submissions made by learned counsel for the parties, the evidence on record, pending trial and in light of the judgement passed by this Court in ***Nanha S/o Nabhan Kha vs. State of U.P., 1993 Cr.L.J. 938*** and the judgement passed by the Apex Court in ***Paras Ram Vishnoi vs. The Director, Central Bureau of Investigation, MANU/SCOR/22410/2021***, without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is **allowed** on the ground of parity.

8. Let the applicant- **Godhan Mahato**, who is involved in aforementioned 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 following conditions. Further, before issuing the release order, the sureties be verified.

(i) The applicant shall not tamper with evidence.

(ii) The applicant shall remain present, in person, before the Trial Court on dates fixed for (1) opening of the case, (2) framing of charge and (3) 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.

9. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

10. It is made clear that observations made in granting bail to the applicant shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

Order Date :- 15.12.2023

Vikas

[Krishan Pahal, J.]