

Court No. - 77

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 52025 of 2023

Applicant :- Rajendra Paswan

Opposite Party :- State of U.P.

Counsel for Applicant :- Arun Kumar Pandey, Suman Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Mrs. Renu Agarwal, J.

1. Supplementary affidavit filed today is taken on record.
2. Heard Mr. Anup Trivedi, learned Sr. counsel assisted by Mr. Arun Kumar Pandey, learned counsel for the applicant, learned A.G.A. for the State and perused the record.
3. The present first bail application under Section 439 Cr.P.C. has been filed on behalf of the applicant in Case Crime No. 382 of 2023 under Sections 332, 353, 147, 323, 504, 307 I.P.C. and Section 4/21 Mines and Minerals (Development and Regulation) Act of 1957 Police Station Maharajpur, District Kanpur Nagar with the prayer to enlarge him on bail.
4. Learned counsel for the accused-applicant submitted that the applicant is innocent and has been falsely implicated in the instant case due to malafide intentions. Informant is the Revenue Inspector, Maharajpur and allegations levelled as per the F.I.R. is that the applicant along with other co-accused persons were involved in illegal mining and threatened the team of the informant of dire consequences and threatened to run his Dumper on the team of the informant. It is submitted that applicant is only the owner of the tractor. It is further submitted that

allegations against the applicant is only of exhortation. It is next submitted that there is no injury to the informant except the complaint of pain in shoulder and elbow. Co-accused who was driver of the said tractor has already been enlarged on bail by co-ordinate Bench of this Court vide order dated 19.07.2023 passed in Criminal Misc. Bail Application No. 11480 of 2023. Applicant has criminal history of eight cases and in three of the cases he has been enlarged on bail; in two of the cases, questionnaire has been filed apprising that no charge sheet has been filed in the said two cases; in rest of the cases C.J.M. concerned has observed that there is no requirement of judicial custody of the applicant. Applicant is languishing in jail since 15.10.2023, there is no chance of tampering with the evidence or absconding from the jurisdiction of this Court 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 and shall co-operate in the trial.

5. 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.

6. Considering the fact that the role assigned to the present applicant is only of exhortation, mere pain in shoulder and elbow is reported as per the injury report, criminal history of the applicant is well explained, co-accused who was assigned the role of driving the tractor has been enlarged on bail vide order dated 19.07.2023 passed in Criminal Misc. Bail Application No. 11480 of 2023 and without expressing any opinion on the merits of the case, accused-applicant is liable to be

released on bail.

7. Let applicant **Rajendra Paswan** 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.

(Renu Agarwal,J.)

Order Date :- 12.12.2023

Karan