

**Court No. - 27**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 1238 of 2023

**Applicant :-** Numaish

**Opposite Party :-** State Of U.P. Thru. Prin. Secy. Home Lko.

**Counsel for Applicant :-** Vinod Kumar Singh, Amresh Kumar, Dinesh Kumar, Gyan Prakash

**Counsel for Opposite Party :-** G.A.

**Hon'ble Brij Raj Singh, J.**

1. Heard learned counsel for the applicant, Sri M.V.S. Chauhan, learned A.G.A.-I for the State and perused record.

2. The present bail application has been filed by the applicant with a prayer for bail in FIR No.0340 of 2021 under Section 396, 412 IPC PS Dewa district Barabanki.

3. Learned counsel for the applicant has submitted that the FIR was lodged against unknown persons on 11.9.2021 and as per allegation of FIR, some unknown persons entered into the house of Ram Suresh and dacoity was committed and also Chandravati was assaulted by dacoits and she died due to assault made by the dacoits.

4. Learned counsel for the applicant has submitted that on 6.11.2021 on information given, the police came to Kursi Tiraha where 5 persons were making plan for dacoity and they were apprehended by the police. It has been submitted by the learned counsel for the applicant that in the confessional statement, the applicant and other co-accused had admitted that they had committed dacoity pertaining to the present case crime. He has submitted that the articles alleged to have been recovered are a piece of Mangal Shutra of yellow metal with mala and cash of Rs.4500/- which is a false recovery. He has submitted that no identification parade was done and there is also no independent eyewitness of the recovery. He has further submitted that recovered articles were identified by the person whose articles were looted but the applicant was not identified by them and no such proceeding is recorded in the recovery memo which indicates that the applicant was identified by the persons whose articles were looted.

5. He has further submitted that the applicant has been falsely implicated in 7 cases in one single arrest. He has further

submitted that there is no clinching and direct evidence collected by the Investigating Officer which may indicate that the applicant was seen or identified by any witness in commission of crime. He has explained the criminal history of the applicant in para10 of the rejoinder affidavit satisfactorily. He has further submitted that the applicant is in jail since 7.11.2021 and there is no likelihood of the trial being concluded in near future.

6. Learned A.G.A. though opposed the prayer for bail and has tried to argue that recovered articles were identified by the person whose articles were looted but he is unable to satisfy the Court that they had identified the applicant.

7. Considering over all facts and circumstances of the case, the argument that the applicant was not named in the FIR, the argument that there is no direct and clinching evidence collected by the Investigating Officer which may indicate that the applicant had committed crime, the argument that no identification parade was done and there is no independent witness of recovery, it is a fit case for bail.

8. Let the applicant, Numaish 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 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.

9. It is made clear that the observations made in this order are limited to the purpose of determination of this bail application and will in no way be construed as an expression on the merits of the case. The Trial Court shall be absolutely free to arrive at its independent conclusions on the basis of evidence led unaffected by anything in this order.

**Order Date :- 20.12.2023**

Rajneesh JR-PS)