

Court No. - 16

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 2471 of 2023

Applicant :- Sachin Gupta

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Home Lko.

Counsel for Applicant :- Pranshu Agrawal, Chandan Srivastava

Counsel for Opposite Party :- G.A., Neeraj Kumar Rai, Sachindra Pratap Singh, Shachindra Pratap Singh

Hon'ble Subhash Vidyarthi, J.

1. Heard Smt. Vandana Singh, the learned counsel for the applicant, Sri Anant Pratap Singh, the learned A.G.A. for the State as well as Sri Shachindra Pratap Singh, learned counsel for the informant and perused the record.
2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 148 of 2022, under Section 406, 420, 467 468, 471 I.P.C., registered at Police Station Bakhsi Ka Talab, Commissionerate, District Lucknow.
3. The aforesaid case has been registered on the basis of F.I.R. lodged on 03.05.2022 against one Vishesh Kumar Tomar alleging that the accused persons had talked to the informant on 15.04.2022 and had offered to supply a petroleum product named Haxene to the informant. The informant had transferred Rs. 20 lakhs through RTGS to a bank account told by the accused persons thereafter he switched off his mobile phone and did not contact to the informant.
4. In the affidavit filed in support of the bail application, it has been stated that the applicant is innocent and he has been falsely implicated in the present case. The applicant's involvement in another case bearing Case Crime No. 198 of 2018, under Section 420, 467 468, 471, 120-B I.P.C., Police Station Nazirabad, District Kanpur Nagar, has been disclosed in para 35 of the affidavit, in which he has been granted bail.
5. The State and the learned counsel for the informant have filed counter affidavits opposing the bail application. It has been stated in the counter affidavit

that the applicant had wrongly projected himself to be Vishesh Kumar Tomar to dupe the informant in the name of supplying a chemical to him. It is recorded in the case diary that the amount of Rs. 20 lakhs which was transferred by the informant to a bank account was withdrawn by five transactions of Rs. 1 lakh each on 19.04.2022 and on the same date, Rs. 5 lakhs were transferred online to the bank account of Kanak Jewellers. Rs. 14 lakhs were transferred to the bank account of M/s Kanak Jewellers on 20.04.2022 in two installments.

6. The learned counsel for the applicant has invited attention of the court to the statement of a Bank employee Kamta Prasad annexed with the counter affidavit wherein he stated that he had opened a bank account of Vishesh Kumar Tomar about 3 and half years ago and he had gone to verify his address. She has further stated that a witness Ashish Gupta had stated that he runs the firm Kanak Jewellers and the amount of Rs. 19 lakhs was transferred as a broker had purchased a gold worth Rs. 19 lakhs from him. The amount of Rs. 19 lakhs were transferred to the bank account of Kanak Jewellers by M/s Vindhyachal Traders. The aforesaid witness had provided a photocopy of Adhaar card and Pan card of Vishesh Kumar Tomar.

7. Replying to the aforesaid statement the learned counsel for the informant has drawn attention to the statement of co-accused Kamta Prasad recorded by the Investigating Officer, who stated that in the year 2021, he was working as Sales officer in ICICI Bank and he verified the address of firm M/s Vindhyachal Traders of Vishesh Kumar Tomar, without visiting the place.

8. Having considered the aforesaid facts and circumstances of the case, what prima facie appears before this court is that the F.I.R has been lodged against Vishesh Kumar Tomar, alleging that he has committed a business fraud against the informant by taking Rs. 20 lakhs through banking channel for supplying a chemical; that in the counter affidavit filed by the informant, he has stated that the applicant was known to the informant and he had regular dealings with him. The informant had asked the applicant about his need of the chemical and thereafter Vishesh Kumar Tomar had called the informant with an offer of supplying the chemical. The amount was transferred to the bank account of M/s

Vindhyachal Traders. The Bank employee Kamta Prasad, who had verified the address of Vishesh Kumar Tomar, stated that he was opening a Daniel Group Company and he did not make a mention of M/s Vindhyachal Traders in his initial statement. In the statement of the Bank Manger, he merely stated that co-accused Dinesh Mishra and Vijay Mishra have been arrested and Vishesh Kumar Tomar is said to be their friend. However, prima facie there appears to be no material on record to give rise to a reasonable apprehension that it is the applicant, who had projected himself as Vishesh Kumar Tomar.

9. Keeping in view the aforesaid facts, coupled with the fact that the applicant is languishing in jail since 15.12.2022 and even charges have not been framed till date, I am of the view that the aforesaid facts are sufficient for making out a case for enlargement of the applicant on bail.

10. Accordingly, this bail application stands **allowed**.

11. Let the applicant- **Sachin Gupta** be released on bail in the aforesaid case, on furnishing a personal bond and two sureties each in the like amount to the satisfaction of Magistrate/Court concerned, subject to the following conditions: -

(i) the applicant shall not tamper with the prosecution evidence;

(ii) the applicant shall not pressurize the prosecution witnesses;

(iii) the applicant shall appear on each and every date fixed by the trial court.

(Subhash Vidyarthi,J.)

Order Date :- 26.10.2023

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