

Court No. - 16

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 2511 of 2023

Applicant :- Abhishek Dixit

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

Counsel for Applicant :- Manish Kumar Tripathi, Rajiv Raman Srivastava

Counsel for Opposite Party :- G.A., Ayodhya Prasad Mishra A.P.
Mishra, Rituraj Mishra

Hon'ble Subhash Vidyarthi, J.

1. Heard the learned counsel for the applicant, Sri Triveni Prasad, the learned A.G.A. for the State and Sri A.P. Mishra, Advocate appearing on behalf of the informant.
2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 0014 of 2021, under Sections 409/420 I.P.C., registered at Police Station Gomtinagar Extension, District Lucknow.
3. The aforesaid case has been registered on the basis of an F.I.R. lodged on 09.01.2021 against 7 persons, including the applicant, alleging that the applicant, who is a Director of Wellbuilt Infrateck Services Pvt. Ltd., his sister and his brother- co-accused persons Neha Dixit and Amitesh Dixit, respectively and another co-accused person had proposed to the informant to purchase a factory manufacturing bricks from fly ash. The price of the factory was told by the accused persons to be Rs.12.5 crores. It is stated in the F.I.R. that the informant paid Rs.2.65 crores on 19.06.2019 in the bank account of the company and he paid Rs.35,00,000/- in cash but neither the accused persons executed the sale deed of the factory in his favour nor refunded the money.
4. In the affidavit filed in support of bail application it has been stated that the applicant is innocent, he has been falsely implicated in the present case and he has no previous criminal history. It has further been mentioned that the applicant is languishing in jail since 23.08.2022.
5. The learned counsel for the applicant has stated that after lodging of the

present F.I.R, the applicant has been implicated in another case bearing Case Crime No. 13/2021, under Section 420, 467, 468 I.P.C., registered at Police Station Cantt., District- Lucknow, which has been lodged by the informant himself.

6. The learned counsel for the applicant has submitted that the applicant had given a cheque for return of the entire amount to the informant but the same was returned by the bank unpaid and the informant has already filed a complaint under Section 138 of Negotiable Instrument Act.

7. A copy of the agreement dated 25.09.2019 regarding purchase of the factory has been annexed with the applicant, which is an agreement executed on a stamp paper worth Rs.100/- and neither proper stamp duty has been paid for execution of the agreement nor the agreement was registered.

8. The learned counsel for the applicant has further submitted that co-accused Neha Dixit @ Neha Tiwari, has already been granted bail by means of an order dated 07.08.2023 passed by this Court in Criminal Misc. Bail Application No.9881 of 2023.

9. Having considered the aforesaid facts and circumstances of the case and keeping in view the fact that one of the co-accused persons Neha Dixit has already been granted bail, coupled with fact that the applicant is languishing in jail since 23.08.2022, I am of the view that the applicant is also entitled to be released on bail in the aforesaid case.

10. After passing of the aforesaid order, Sri A.P. Mishra, the learned counsel for the informant appeared and sought an opportunity to oppose the bail application and stated that he could not appear before this court when the case was taken up as he was busy in some other court.

11. Sri A.P. Mishra, has filed a counter affidavit which is taken on record. He states that the applicant has taken Rs. 2,65,00,000/- from the informant through bank transfer and he has further submitted that this court had referred the matter to Mediation and Conciliation Center of this Court by means of an order dated

02.03.2023. The Mediation has failed as per the office report dated 26.08.2023. He has further submitted that the applicant has admitted having taken Rs. 2,65,00,000/- from the informant. He next submitted that the applicant has not cooperated with the investigation.

12. Sri A.P. Mishra, has further submitted that after investigation, the Investigating Officer has submitted a charge-sheet for commission of offences under sections 406, 420, 409, 323, 504, 506 I.P.C and Section 3(2)(V) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. His submission is that as commission of offence under Section Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, is involved in the present case, the applicant ought to have filed an appeal under Section 14(A) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, and the present bail application is not maintainable.

13. The State has filed a counter affidavit opposing the bail application and a copy of the charge sheet submitted in the present case has been annexed with the affidavit, which indicates that the charge-sheet has been filed for commission of offences under Section 420 and 409 I.P.C. only and no offence under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, is mentioned in the charge-sheet. Therefore, the objection raised by the learned counsel for the informant is not tenable and the applicant has rightly filed an application under Section 439, before this court.

14. Having considered the aforesaid facts and circumstances of the case and keeping in view the fact that a perusal of the F.I.R. indicates grievance of the informant regarding non-execution of the sale deed in respect of the factory worth Rs.12.5 crores after payment of Rs.3 crores by the informant; that no registered agreement regarding purchase of immovable property has been executed and no suit for specific performance of agreement or for recovery of the money has been instituted by the informant; that a complaint under Section 138 of the Negotiable Instrument Act has already been filed by the informant; that one of the co-accused persons Neha Dixit has been granted bail and that the applicant is languishing in jail since 23.08.2022 and without making any

observation, which may affect the merits of the case, I am of the view that the aforesaid facts are sufficient for making out a case for enlargement of the applicant on bail in the aforesaid crime.

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

16. Let the applicant- **Abhishek Dixit** 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 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 :- 13.10.2023

Preeti.