

Court No. - 29

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 7754 of 2023

Applicant :- Santoshi

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

Counsel for Applicant :- Dileep Kumar Pathak

Counsel for Opposite Party :- G.A., Dadu Ram Shukla (D.R. Shukla)

Hon'ble Mrs. Sadhna Rani (Thakur),J.

1. Heard learned Counsel for the applicant, learned counsel for first informant as well as learned A.G.A. and perused the record.
2. The accused- applicant is involved in Case Crime No. 240 of 2016, under Sections 419, 420, 467, 468, 471 and 120-B IPC, Police Station Kotwali Nagar, District Gonda.
3. It is argued by learned counsel for the applicant that the applicant is not named in the FIR. For the first time his name came into light in the statement of son of the first informant wherein he has stated that on the basis of a sale deed of the year 1969 Raj Kumari got her name mutated in the revenue record on the disputed property which was purchased by the first informant on 04.08.1982 from Satguru Prasad. In the planned way Raj Kumari executed the power of attorney on 04.02.2016 in favour of Amrish Kumar showing him to be her son and in that power of attorney, the present applicant and Ashok Shukla are shown to be the witnesses. The present applicant is 86 years old person as is clear from the report of Jail Superintendent dated 06.05.2023. The applicant is languishing in jail since 19.04.2023. In this case, final report had been filed twice. Co-accused Brijesh Kumar Awasthi, Rakesh Tripathi and Mahendra Pratap Singh have been granted by a co-ordinate Bench of this

Court. Bail orders of Rakesh Tripathi and Mahendra Pratap Singh are appended with this paper book.

4. Learned A.G.A. as well as learned counsel for first informant opposed the prayer for the bail of the applicant and submitted that the bail applications of co-accused Mahendra Pratap Singh and Rakesh Tripathi have been rejected in the present case crime number and the application for cancellation of bail order of co-accused Brijesh Kumar Awasthi is pending in this case. There is criminal history of ten cases against the applicant. The applicant is a pocket witness of co-accused Brijesh Kumar Awasthi. The sale deed of the year 1969 was found to be forged by the court. This is an organized crime committed by a gang of persons of which the applicant is an active member. Hence, the prayer for bail is opposed.

5. Learned counsel for first informant drew the attention of this Court towards the judgment of Apex Court in the case of ***Neeru Yadav Vs. State of Uttar Pradesh AIR 2015 Supreme Court 3703*** and submitted that when the bail application of the accused in the case was granted solely on the ground of parity that order was set aside by the Apex Court and the Apex Court made an observation as under:-

"It is a well settled principle of law that while dealing with an application for grant of bail, it is the duty of the Court to take into consideration certain factors and they basically are, (i) the nature of accusation and the severity of punishment in cases of conviction and the nature of supporting evidence, (ii) reasonable apprehension of tampering with the witnesses for apprehension of threat to the complainant, and (iii) prima facie satisfaction of the court in support of the charge."

6. Hence the prayer for bail is opposed.

7. From the perusal of record, it is found that in the FIR the

applicant is not named. There is allegation that a gang comprising of Anil Kumar Singh, Advocate, Rakesh Singh, Advocate and Brijesh Kumar Awasthi, is engaged in preparing the forged sale deeds with an intention of grabbing the properties of innocent persons. There is allegation that Raj Kumari with the connivance of Advocate Brijesh Kumar Awasthi got a sale deed executed in her name regarding the property of the first informant. The present applicant is said to be a witness in power of attorney executed by Raj Kumari in favour of Amrish Kumar showing him to be her son wherein Amrish Kumar was given a right by Raj Kumari to contest the cases filed against Raj Kumari. By this power of attorney dated 04.02.2016 Amrish Kumar was also given a right to sell the property of Raj Kumari. The applicant is shown to be having a criminal history of ten cases and is said to be a pocket witness of Brijesh Kumar Awasthi, who has already been granted bail by a co-ordinate Bench of this Court, though his cancellation of bail is said to be pending before the Court. In the present case, the matter in dispute is a sale deed dated 15.07.1969 regarding disputed property executed in favour of Raj Kumari on the basis of which the name of Raj Kumari was mutated in place of first informant Sunder Pati on the property in dispute in the revenue records. The power of attorney is of the year 2016 wherein the applicant is shown to be a witness. The applicant an eighty six years old person is in custody since 19.04.2023.

8. Perusing the record, considering the facts and circumstances of the case, the nature of allegations, arguments advanced by the learned counsel for the parties and without expressing any opinion on the merit of the case, I find it to be a case of bail.

9. The bail application is allowed.

10. Let the applicant Santoshi, who is involved in aforesaid

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.

1. The applicant will attend and co-operate the trial proceedings pending before the court concerned on the dates fixed after release.

2. He will not tamper with the witnesses.

3. He will not indulge in any illegal activities during the bail period.

9. The identity, status and residential proof of sureties will be verified by the court concerned and in case of breach of any of the above conditions, the trial court shall be at liberty to cancel the bail and send the applicant to the prison.

11. It is clarified that the observations, if any, made in this order are strictly confined to the disposal of this bail application and must not be construed to have any reflection on the ultimate merits of the case.

Order Date :- 12.12.2023

Virendra