

Court No. - 9

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 7833 of 2023

Applicant :- Awadh Sharan Mishra

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

Counsel for Applicant :- Rajendra Prasad Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Dinesh Kumar Singh,J.

1. Heard Sri Rajendra Prasad Mishra, learned counsel for the applicant as well as Sri Rajesh Kumar Singh, learned A.G.A. and Sri Sanjay Mishra holding brief of Sri Hemant Kumar Mishra, learned counsel for the complainant and perused the record.

2. The present application under Section 439 Cr.P.C. has been filed seeking bail in FIR No.269 of 2022, under Sections 420, 466, 467, 468, 471 and 409 IPC, Police Station Mankapur, District Gonda.

3. The accused-applicant was Principal of A.P. Inter College, Mankapur, District Gonda from May, 2003 to July, 2020. Allegation against the accused-applicant is that on 16.2.2003 Sona Devi, Sweeper stopped coming to the College and in her place, her son Shrawan Kumar was given appointment by the accused-applicant in the College as Sweeper. It is further said that without terminating the services of Sona Devi, Pradeep Kumar was appointed as stop-gap arrangement on the post of Sweeper on 7.8.2004. On 19.8.2004, Pradeep Kumar took charge of the Sweeper. The accused-applicant sent papers for release of salary to Pradeep Kumar on 19.8.2004. It is said that the appointment of Pradeep Kumar was made on the basis of forged documents.

4. The District Inspector of Schools on 10.4.2005 wrote a letter to the accused-applicant, who was the Principal of the College, saying that Pradeep Kumar had filed Writ Petition No.913(SS) of 2005 before the High Court, in which an interim order was passed on 9.2.2005. In the interim order, it was provided that salary to Pradeep Kumar would be given only for four months. When the said writ petition was pending, the District Inspector of Schools on 1.5.2005 passed an order for substantive appointment of Pradeep Kumar on the post of Sweeper for a period of six months. Writ Petition No.913 (SS) of 2005 filed by Pradeep Kumar came to be dismissed on 26.11.2006 and the interim order was vacated. Despite the dismissal of the aforesaid writ petition, salary to Pradeep Kumar was paid for fifteen years.

5. From the FIR itself, it is clear that it was the District Inspector of Schools, committee of management and the accused-applicant were party to the said writ petition, but there is nothing on record to suggest that the accused-applicant had filed his Vakalatnama in the said writ petition. If the writ petition came to be dismissed on 26.11.2006, then it was the duty of the committee of management as well as the District Inspector of schools and the accused-applicant to stop the salary of Pradeep Kumar, but only the accused-applicant has been targetted. Accused-applicant has been in jail since 15.5.2023 and he has no other criminal history.

6. Learned AGA and the learned counsel for the complainant have opposed the prayer for bail, but not disputed the aforesaid facts.

7. Considering the above facts and circumstances of the case, coupled with the contentions raised by the learned counsel for both sides, and without entering into the merit of the case, the

applicant is entitled to be released on bail.

8. Let applicant **Awadh Sharan Mishra** 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.

Order Date :- 23.6.2023

Rao/-