

Court No. - 16

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 7970 of 2023

Applicant :- Mannalal

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

Counsel for Applicant :- Vivek Chandra

Counsel for Opposite Party :- G.A.,Ashok Kumar Mishra

Hon'ble Subhash Vidyarthi,J.

1. Heard Sri Vivek Chandra, learned counsel for the applicant, Smt. Arti Gupta Singh, the learned A.G.A. for the State and Sri Ashok Kumar Mishra, the learned counsel for the informant.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 344 of 2022, under Sections 406, 504, 506 I.P.C., registered at Police Station Badosarai, District Barabanki.

3. The aforesaid case has been registered on the basis of an F.I.R. lodged on 09.11.2022 against four persons, including the applicant and his brothers, stating that the informant is related to the accused persons, who had offered to sell his agricultural land. The informant had entered into an agreement dated 22.07.2023 and paid Rs.3,50,000/- through cheque and Rs.4,00,000/- in cash. The agreed sale consideration was Rs.11,50,000/- and Rs.4,00,000/- remained balance to be paid. The sale deed was agreed to be executed within a period of two months. The F.I.R. states that Rs.5,50,000/- are to be paid by the accused persons to the informant and the accused persons want to grab the informant's money. The informant has prayed that the money paid by him under the agreement be returned to him, which appears to be in the nature of claiming a decree for payment of money. A copy of the agreement dated 22.07.2023 annexed with the affidavit shows that it has been executed on a stamp paper worth Rs.100/- only and it has not been registered.

4. In the affidavit filed in support of bail application it has been stated that the applicant is innocent and he has been falsely implicated in the present case. The applicant's criminal history of four other cases has been disclosed in para 13 of the affidavit. It has further been submitted on behalf of the applicant that co-accused persons Vinod Kumar and Deshraj have already been granted bail by this court by means of an orders dated 25.08.2023 and 18.09.2023, passed in Criminal Misc. Bail Application Nos.10629 of 2023 and 11207 of 2023.

5. The learned counsel for the informant has vehemently opposed the bail application and he has submitted that the applicant is accused in four cases, including a case under the U.P. Gangster and Antisocial Activities Prevention Act, which fact has already been disclosed in the affidavit filed in support of the bail application.

6. The learned A.G.A. has opposed the prayer for bail but he could not dispute the aforesaid aspects of the matter.

7. Having considered the aforesaid facts and circumstances of the case, prima facie it appears that the allegations levelled in the F.I.R. are regarding non-performance of obligation under an agreement and it appears that the applicant has not paid the entire sale consideration. By lodging the F.I.R. the informant has prayed for refund of money paid by him under the agreement; that the prayer made through the F.I.R. can only be made before the Civil Court by filing a suit for recovery of money, which obviously would require payment of court fees. The informant has tried to bypass the civil proceedings and evade the payment of court fees, which prima facie amounts to deceiving the public at large which has been deprived of the benefit of money that would have gone to the public exchequer as court fee. Therefore, this court is of the opinion that the criminal proceedings initiated by lodging the F.I.R. are gross abuse of the process of law. Keeping in view the aforesaid facts, coupled with the fact that the applicant is languishing in jail since 23.03.2023 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.

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

9. Let the **applicant-Mannalal** 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.

Order Date :- 6.11.2023

Ram.