

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 9841 of 2023

Applicant :- Ashutosh Kumar

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

Counsel for Applicant :- Punit Kumar Shukla, Priyanka Singh

Counsel for Opposite Party :- G.A., Anurag Singh

Hon'ble Mohd. Faiz Alam Khan, J.

1. Rejoinder affidavit, filed on behalf of the applicant, is taken on record.
2. Learned counsel for the complainant/informant is not present though his name is printed in the cause-list and, no adjournment has either been sought on his behalf.
3. Learned A.G.A. informs that he has procured complete instructions in the matter.
4. Heard learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.
5. This bail application has been moved by the accused/applicant- **Ashutosh Kumar** for grant of bail, in Case Crime No.0879 of 2008, under Sections 147, 302 and 201 I.P.C., Police Station Mishrikh, District Sitapur, during trial.
6. Learned counsel for the accused-applicant while pressing the bail application submits that F.I.R. of this case has been lodged way back on 11.07.2008 and after thorough investigation, Closure Report/Final Report was filed and thereafter a protest petition was filed by the informant and the trial court after treating the same as complaint case and after recording statement of the informant under Section 200 Cr.P.C. as well as of his witnesses under Section 202 Cr.P.C. finding a prima facie case against the accused persons including the applicant, had summoned them by passing summoning order dated 23.12.2015.
7. It is further submitted that the said summoning order was challenged before this Court by moving an application under Section 482 Cr.P.C., however, the said application was rejected by a Coordinate Bench of this Court vide order dated

25.08.2022. It is vehemently submitted that it is a case of false implication and the investigating officer had investigated the allegations of the F.I.R. in depth and the Closure Report was filed, however, the trial court has summoned the accused persons including the applicant to face trial without there being any basis.

8. It is also submitted on behalf of the applicant that the mandate of Section 202 Cr.P.C. has also not been followed by the trial court as an inquiry as contemplated under Section 202 Cr.P.C. has not been held and without holding the same, the summoning order has been passed. It is further submitted that the applicant is not having any criminal history and the guilt of the applicant is still to be adjudicated and there appears lacuna in the case of the prosecution as allegations at first were not found truthful by the investigating officer.

9. It is next submitted that identically placed co-accused, Anoop Kumar has been enlarged on bail by this Court vide order dated 03.11.2023 passed in Criminal Misc. Bail Application No.12544 of 2023. The applicant is in jail in this case since 04.07.2023 and he undertakes that he will cooperate in expeditious disposal of the case and would not seek any adjournment especially when the prosecution witnesses would be in attendance and would do all which would be required for early disposal of the case. There is no apprehension that after being released on bail the applicant may flee from the course of law or may otherwise misuse the liberty.

10. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that the applicant has committed an heinous offence and the summoning order has also been affirmed by the Coordinate Bench of this Court while rejecting the application moved by the applicant under Section 482 Cr.P.C. and having regard to the material/evidence available against the applicant, he is not entitled to be released on bail.

11. Having heard learned counsel for the parties and having perused the record, it is evident that initially after lodging of the F.I.R. and after making thorough investigation, a Closure Report/Final Report has been submitted. The informant aggrieved by the same had filed protest petition, which has been treated as complaint case and following the procedure provided under Chapter 15 of the Cr.P.C. the accused persons including the applicant have been summoned. The applicant has exhausted all the remedies available to him by preferring a revision as well as application before this Court under Section 482 Cr.P.C. The defence of the applicant appears to be that the allegations of the F.I.R. were thoroughly investigated and the

same were not found truthful and it is only on account of finding a prima facie case, the accused persons including the applicant have been summoned. Identically placed co-accused, Anoop Kumar has been enlarged on bail by this Court. The applicant is in jail in this case since 04.07.2023 without any previous criminal history. The presence of the applicant could be secured before the trial court by placing adequate conditions.

12. Having regard to the overall facts and circumstances of the case and keeping in view the nature of the offence, evidence, complicity of the accused, severity of punishment, submissions of the learned counsel for the parties and without expressing any opinion on the merits of the case, I am of the considered view that applicant has made out a case for bail. The bail application is thus allowed.

13. Let the accused/applicant-**Ashutosh Kumar**, involved in above-mentioned case, be released on bail on his furnishing a personal bond with two sureties in the like amount to the satisfaction of the court concerned subject to following conditions:-

(i) The applicant shall not tamper with the prosecution evidence by intimidating/pressurizing the witnesses, during the investigation or trial.

(ii) The applicant shall cooperate in the trial sincerely without seeking any adjournment.

(iii) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

14. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

15. Identity, status and residence proof of the applicant and sureties be verified by the Court concerned before the bonds are accepted.

16. Observations made herein-above by this court are only for the purpose of disposal of this bail application and shall not be construed as an expression of this Court on the merits of the case.

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[Mohd. Faiz Alam Khan,J.]

Order Date :- 6.11.2023MVS/-