

Court No. - 12

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10389 of 2023

Applicant :- Ashish Rai

Opposite Party :- State Of U.P. Thru. Its Addl. Chief Secy. Home Civil Sectt. Lko

Counsel for Applicant :- Ravi Singh, Digvijai Singh

Counsel for Opposite Party :- G.A., Romit Seth

Hon'ble Rajeev Singh, J.

1. Heard Shri Ravi Singh learned counsel for the applicant, Shri Romit Seth, learned counsel for the informant as well as Shri V.K. Sahai, Additional Advocate General assisted by Shri Rao Naren Singh, learned A.G.A. for the State of U.P. and perused the record.

2. The present bail application has been filed on behalf of the applicant in Case Crime No.160 of 2020 under Sections 406, 419, 420, 467, 468, 471, 170, 120B I.P.C. and 7(A)/8(1)(i) P.C. Act., Police Station Hazratganj, District Lucknow with the prayer to enlarge him on bail.

3. Learned counsel for the applicant submitted that the applicant is an innocent person and has been falsely implicated in the present case and he is in jail since 15.06.2020. He further submitted that the charge sheet was filed merely on the basis of presumption and not even a single evidence was collected by the Investigating Officer that the money in question was received by the applicant. He further submitted that charge sheet dated 10.09.2020 was prepared and submitted in the Court, and thereafter, charges were framed on 09.09.2021 for the offences under Sections 406, 419, 420, 467, 468, 471, 120B I.P.C., 7Ka and 8(1) of P.C. Act. He further submitted that not even a single document was sent to F.S.L. for examination that whether the said documents were prepared by the applicant.

4. Learned counsel for the applicant submitted that the allegation of releasing money was against one Vaibha Shukla and Santosh Sharma but their name were deleted. He further submitted that first bail application of applicant was rejected by this Court on 28.03.2023 on the ground that visuals of applicant was found in the C.C.T.V. footage and at the time of rejection of bail application, trial court was directed to conclude trial, expeditiously without giving unnecessary adjournment to either of the parties, but till today, not even a single witness has been

examined. He further submitted that as per the prosecution case, in the month of April, 2018, informant was called in the Civil Secretariat and the applicant claimed himself as Deputy Director, Purchase in Animal Husbandry, namely, S.K. Mittal and also offered for providing a tender of supply of the articles of amounting Rs.2,92,14,00,000 and after formal conversation, informant was advised to pay three per cent of the total value of the supply order as advance and supply would be required to be completed within a period of one year.

5. Learned counsel for the applicant submitted that as per the prosecution case, informant paid Rs.9,72,12,000/- to the applicant through Vaibhav Shukla and Santosh Sharma, and thereafter, informant again met with the alleged S.K. Mittal with Vaibhav Shukla and Santosh Sharma and requested him to make supply immediately then the original documents were taken back by applicant and informant was informed that only supply order would be issued to him and when the objection was raised then he was advised not to worry, thereafter, Vaibhav Shukla and Santosh Sharma met him at Indore and told that the original order is ready, number of vehicles and details of the driver are to be given for filling the documents, and thereafter, informant was victimized by the co-accused Arvind Sen who was a police officer of DIG rank, thereafter, informant submitted application for lodging of the F.I.R. He further submitted that charge sheet was filed against 17 accused persons and out of 17, 10 accused persons have already been granted bail. He further submitted that applicant was also implicated in one another case i.e. F.I.R. No.215 of 2020 under Sections 120B, 419, 420, 467, 468, 471, 506 and Sections 7, 13 of Prevention of Corruption Act, P.S. Hazratganj, District-Lucknow on the basis of incorrect facts, in which, he has already been granted bail.

6. Learned counsel for the applicant submitted that as per the prosecution case mentioned in the case diary, the applicant met with the informant in the Civil Secretariat in the chamber of State Minister, Animal Husbandry which is highly improbable that adjoining the chamber of the every minister, there is a room of staff well connected with the chamber of the minister but in the present case, neither the private secretary of the minister nor any Class-IV employee or any other person was interrogated in the present case and it is also highly improbable that without any valid pass, applicant was allowed to enter into the Civil Secretariat and went to the chamber of the State Minister, Animal Husbandry. He further submitted that this is all concocted story which has no evidence. He further submitted that there is no possibility of tampering of evidences and applicant is ready to cooperate in the trial, in these

circumstances, the applicant is entitled for bail. In case of being enlarged on bail, he will not misuse the liberty of bail.

7. Shri V.K. Sahai, Additional Advocate General has opposed the prayer of the applicant for grant of bail and submitted that applicant was the master-mind of the crime in question and also submitted that he claimed himself as Deputy Director, Purchase, Department of Animal Husbandry and was sitting in the chamber of State Minister, Animal Husbandry and also provided the tender documents to the informant and took Rs.9,72,12,000/- through his associates at different dates. He further submitted that under the permission of the State Government, mobile phones of all the accused persons were kept on surveillance and it was found that they were in conversation related to the offence which was committed in the year of 2018 with the informant.

8. Shri V.K. Sahai, Additional Advocate General submitted that request was made for taking the voice sample of the applicant but he denied. He further submitted that Shri Rajnish Dixit and Shri Umesh Mishra, Review Officers of the Animal Husbandry, have been made accused but he does not dispute this fact that no any private secretary or other staff has been arrayed as accused. He further submitted that the transaction of the huge amount was found in the account of applicant but he does not dispute this fact that the applicant is in jail since 15.06.2020 and charge sheet was filed on 10.09.2020 and charges were framed on 09.09.2021. He also conceded the fact that first bail application of the applicant was rejected with the direction to trial court to conclude trial, expeditiously without giving unnecessary adjournment to either of the parties but till today not even a single witness has been examined. He further submitted that the trial could not be proceeded because several accused persons have moved discharge application before the trial court and merely on the ground that trial is not being proceeded, the applicant will not be entitled for bail.

9. Shri V.K. Sahai, Additional Advocate General as well as learned counsel for the informant informed that the bail application of the co-accused Dilbahar Yadav has been rejected by the Co-ordinate Bench of this Court on 05.10.2023, therefore, applicant is not entitled to be released on bail.

10. Considering the rival submissions of learned counsel for parties, material available on record, contents of the F.I.R., other relevant documents as well as totality of fact and circumstances, as per the prosecution case, victim was cheated by the applicant by sitting on the seat of State Minister, Animal Husbandry in the Civil Secretariat, U.P., Lucknow in the month

of April, 2019 onward for giving the work order but in the case diary, the details of place where informant met with the applicant first time is not properly explained, as it is also undisputed that charges sheet was filed against 17 persons and out of 17, 10 persons have already been granted bail.

11. As it is undisputed that money was taken from the informant by Vaibhav Shukla and Santosh Sharma but they have not been made accused, at the time of deciding the bail application of the applicant on 28.03.2023, direction was given to trial court to conclude trial expeditiously without giving unnecessary adjournment to either of the parties but not even a single witness is examined, as applicant is in jail since 15.06.2020, therefore, I am of the view that the applicant is entitled to be released on bail.

12. Let applicant - **Ashish Rai** - be released on bail in aforesaid Case Crime, on his furnishing personal bond and two reliable sureties each of the like amount to the satisfaction of the court concerned subject to following conditions:-

(i) The applicant shall not commit or participate in any offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.

(ii) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

(iii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the date 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.

(iv) 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 IPC.

(v) 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., may be issued and if 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 IPC.

(vi) The applicant shall remain present, in person, before the Trial Court on dates fixed for (1) opening of the case, (2) framing of charge and (3) 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.

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

14. Trial court is directed to conclude trial, expeditiously, without giving unnecessary adjournment to either of the parties.

Order Date :- 2.11.2023

V. Sinha