

Court No. - 18

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10906 of 2023

Applicant :- Sandeep Ojha

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

Counsel for Applicant :- Sachin Kumar Pandey

Counsel for Opposite Party :- G.A., Ganesh Kumar Gupta, Hari Om Pandey, Manoj Kumar Yadav

Hon'ble Shree Prakash Singh, J.

Rejoinder affidavit filed today by counsel for the applicant is taken on record.

Heard Sri Sachin Kumar Pandey, learned counsel for the applicant, Sri Ganesh Gupta, learned counsel for the informant, Sri Hari Om Pandey, counsel for opposite party no. 2, Sri Ravish Chandra Mishra, learned A.G.A. for the State and perused the record.

Instant application has been filed with a prayer to release the applicant on bail during the trial in case Crime No. 290 of 2022 under sections- 419, 420, 467, 468, 506, 120B of IPC at P.S. Mishrikh District- Sitapur.

The fact remains that the applicant was granted bail on 01.11.2022 with the condition that the applicant shall pay an amount of Rs. 6,52,000/- to Mamta Devi i.e opposite party no. 2 within a period of one month. The order passed by this Court in Criminal Misc. Bail Application No. 11907 of 2022 dated 01.11.2022 is reproduced hereinunder :-

"Supplementary affidavit dated 1.11.2022 filed by learned counsel for the applicant in court today is taken on record.

Heard learned counsel for the applicant, Mr. Shyamji Dixit, learned counsel appearing on behalf of the complainant as well as Mr. Girijesh

Kumar Dwivedi, learned A.G.A. appearing for the State and perused the record.

The instant bail application has been filed on behalf of the applicant with a prayer to release the applicant on bail during the trial in Case Crime No. 290 of 2022, under Sections 419/420/467/468/506/120-B I.P.C., P.S.- Mishrikh, District - Sitapur.

Learned counsel appearing for the applicant submits that the applicant is innocent and he has been falsely implicated in this case. He next added that under certain misconception the name of the present applicant has been placed in the first information report and added that the present applicant is ready to pay the amount in question i.e. 6,52,000/- to Mamta Devi W/o Suresh within a period of one month. He further added that he has specifically mentioned in para 3 of the supplementary affidavit that he is ready to support the case regarding cancellation of registered sale deed filed by Mamta Devi. He next added that the applicant was never involved in committing any kind of offence. He again added that the applicant is a law abiding citizen and is languishing in jail since 15.07.2022. He submits that the applicant undertakes that in case he is granted bail, he will not misuse the liberty and would cooperate in the trial proceedings.

On the other hand, learned counsel appearing on behalf of the complainant has opposed the contentions aforesaid but he has no objection if the aforesaid amount is being repaid back to one Mamta Devi and further to the fact that the applicant is ready to support the version of the plaintiff i.e. Mamta Devi before the Civil Court.

Learned A.G.A. appearing for the State has no objection to the contention aforesaid.

Considering the aforesaid facts and circumstances of the case, I find it a fit case for bail.

Let the applicant- Sandeep Ojha involved in the aforementioned crime be released on bail, on his furnishing a personal bond and two heavy sureties each in the like amount, to the satisfaction of the court concerned, with the following conditions:-

(1) The applicant shall repay back an amount of Rs.6,52,000/- to Mamta Devi within a period of one month, failing which the complainant as well as the State Counsel shall be at liberty to file an application for cancellation of bail against the applicant.

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

(3) 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. He 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;

(4) 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.; and

(5) 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, the trial court shall initiate proceedings against him, in accordance with law under Section 174-A of the Indian Penal Code.

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 court below shall be at liberty to cancel the bail and send the applicant to prison.

It is clarified that the observations 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 merits of the case."

Thereafter, the applicant was released on bail but in event of his failure to comply with the condition no. 1, imposed vide in the order dated 01.11.2023, the application for cancellation of bail, bearing Criminal Misc. Bail Cancellation Application No.37 of 2023 (Mamta Devi Vs State of U.P) was instituted before this Court and considering the violation of condition no. 1, fixed in the order dated 01.11.2022, this Court passed the order on 22.05.2023 whereby, the order dated 01.11.2022 was recalled and the sureties and personal bonds were forfeited, thereafter, the instant application has been filed seeking bail of the applicant while contending that the amount in question i.e. Rs.6,52,000/- which was the condition in the bail orders earlier has been given subsequently, to the opposite party no. 2 i.e. the purchaser.

Learned counsel for the applicant submits that the applicant is innocent and has been falsely been implicated in the instant matter. He further added that under certain misconception, the name of the present applicant has been placed in the first information report and the applicant has already paid the amount of Rs. 6,52,000/- which could not be paid due to financial hardship and except apart the above-said, there is no

breach of any condition provided in the bail order dated 01.11.2022. He also added that the purchaser has already filed a suit for cancellation bearing suit no. 397 of 2022 though, the same was dismissed, for want of prosecution, but later on application for recall was moved by opposite party no. 2 along with the application for condonation of delay, which is pending consideration before the court concerned. He added that the purchaser herself has admitted the fact that she would not claim the property in question and therefore, no prejudice is caused to the informant. He also added that it is not a case where any kind of condition is jumped by the applicant, but the condition which could not be complied with i.e. due to financial hardship and later on that was complied with, which is an admitted fact between the parties. He next added that the applicant is in jail since 20.07.2023 and there is one criminal antecedent of the applicant, which has been explained in the supplementary affidavit. He further submits that the applicant undertakes that he is a law abiding citizen and if he is granted bail, he will not misuse the liberty and cooperate in the trial proceedings.

On the other hand learned counsel appearing for the opposite party no. 2 i.e. the purchaser submitted that he has received an amount of Rs. 6,52,000/- and now he has no grudge against the applicant. He further added that as soon as this fact came into the knowledge that there is a dispute with respect to the property as the same is alleged to have been transferred while committing cheat and fraud, the purchaser herself, moved a suit for cancellation of sale deed, which was executed into between the applicant as well as the opposite party no. 2, though, the same was dismissed, but a recall application along with the application for condonation of delay is filed, which is still pending considering before the trial court concerned and he further submits that opposite party no. 2 would not withdraw

the aforesaid suit and press the same to go to its logical end. Showing his bonafide, he has also submitted that though, the name of heirs of the informant has already been recorded in the revenue record as per the provision under PA-11 and the opposite party no. 2, further undertakes that she will not claim any right in the property in question at any stage and if, required she will also give undertaking before the authority concerned that she has no claim in the property in dispute.

Per contra learned counsel for the informant has vehemently opposed the contentions aforesaid and submits that the property in question has been sold out by the applicant while personifying the son of the informant to the opposite party no. 2, and thus, the loss is committed to the informant.

He further added that the purchaser and the applicant is colluded and behind the back of the informant, the amount has been received by the purchaser though, both are on equal pedestal of committing cheat and fraud. He further added that anxiety of the informant is that his property be safe unless the suit filed by opposite party no. 2 is decided.

Learned counsel for the State has pointed out that the chargesheet has been filed against the applicant and the name of the purchaser has been struck off.

Considering the submissions of learned counsel for the parties and after perusal of material placed on record, it transpires that initially an FIR was lodged by the informant with the allegation that the present applicant, while committing cheat & fraud and by way of personifying the son of the informant, has transferred the property by way of a registered sale deed to the purchaser and therefore, the purchaser as well as the vendor being the beneficiary are liable to face the criminal consequences.

When the Bail Application No. 11907 of 2022 was filed, considering all these aspect, this Court passed the order dated 01.11.2022 while fixing certain terms and conditions including that the amount Rs. 6,52,000/- which was given by the purchaser against the sale consideration, was directed to be given to the purchaser within a period of one month though, in the event of the non-compliance of the condition aforesaid, the bail cancellation application no. 37 of 2023 was moved by the opposite party no. 2/ purchaser which was entertained by this Court and once it was found that the condition has been flouted by the applicant, the bail of the applicant was cancelled vide order dated 22.02.2023.

This Court has further noticed the fact that the land in question has already been mutated in favour of legal heirs of the son of the informant and more so, a suit for cancellation of the sale deed has already been instituted by the purchaser, when the actual facts with respect to sale deed, which was executed by the applicant, came into the knowledge that the same is done by personifying the son of the informant.

This Court has also taken note of the statement given by the counsel for opposite party no. 2 that the opposite party no. 2 shall not claim any right in the property in question in future and further, she will not withdraw the civil suit filed by her before the civil court.

Further, there is one criminal case history against the applicant which has been explained by way of filing supplementary affidavit.

Considering, all over circumstances of the case, it is a fit case to grant bail to the applicant.

Resultantly, the applicant namely, **Sandeep Ojha** involved in the aforementioned 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, with following conditions:-

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

(2) 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. He 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;

(3) 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.; and

(4) 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, the trial court shall initiate proceedings against him, in accordance with law under Section 174-A of the Indian Penal Code.

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 court below shall be at liberty to cancel the bail and send the applicant to prison.

It is clarified that the observations 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 merits of the case.

Order Date :- 12.12.2023

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