

Court No. - 28

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11561 of 2023

Applicant :- Arvind Mishra

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

Counsel for Applicant :- Samrat Gupta, Sarvesh Kumar Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Mrs. Jyotsna Sharma, J.

1. Heard learned counsel for the applicant and learned A.G.A. for the State.

2. This application has been filed by the applicant seeking bail in Case Crime No. 117 of 2022 under sections 457, 380, 411 I.P.C. P.S.- Vikas Nagar, District- Lucknow.

3. As per the prosecution case, the accused-applicant was found involved in an incident of house breaking by night and committing theft of valuables, golden and silver jewellery, Rs. 2,30,000/- cash etc. On 23.08.2022, three persons going on motorcycle were apprehended and a bag containing stolen articles was recovered from their possession. As per prosecution case, the accused and his associates were carrying stolen articles with regard to instant case.

4. It is contended on behalf of applicant that a false recovery has been shown from him. There is no specific allegation that the bag was being possessed by the instant applicant only hence, it cannot be said that accused was involved in this case of theft. It is further argued that he is not named in the F.I.R. There is no independent witness of incident of house breaking in theft. At the most, case of dealing in stolen property is made out and not of house breaking by night or theft. As far as criminal history of applicant is concerned, 11 cases were slapped on him on the basis of the same recovery memo prepared by the police in a most suspicious manner. In rest of the cases cited as criminal history, he is on bail. Presently, the applicant has undergone a period of detention of more than about 15 months. It is further stated that he will cooperate in the trial and shall abide by all the conditions of bail.

5. The application of bail is opposed by the learned A.G.A. however, a number of arguments as regard manner of recovery, identification of stolen articles could not be countered. It is forcefully contended by the State that the applicant has a criminal history of 33 cases. He was found involved in 11 cases of theft of valuables from houses in 2018. Subsequently, he was found in a number of cases of similar nature in 2021 and 2022. He is a habitual offender. If he is released on bail, he will abscond making it difficult for the cases to run.

6. I considered nature of the allegations, role ascribed to the applicant, the evidence proposed, the severity of punishment and all other facts and circumstances of the case. In view of the objections raised by the learned A.G.A. as regard long criminal history and probability of his absconding, I find it fit to release him on bail as below:-

7. Let applicant - **Arvind Mishra** be released on bail in the aforesaid Case Crime Number 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 temper with evidence/witnesses.

(ii) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel.

(iii) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) framing of charge and (ii) recording of statement under Section 313 Cr.P.C. without exception.

(iv) It is further provided that before issuing the release order, present as well as permanent address of the accused as well as sureties shall also be duly verified and the applicant shall submit undertaking that he shall not change his address without prior intimation to the court concerned as well as the police station concerned.

(v) It is further provided that the applicant shall register his presence anytime, once in a month at the local police station.

8. Any violation of above conditions will be treated as misuse of bail and learned Court below will be at liberty to pass appropriate order.

9. It is made clear that the observations made in this order are limited to the purpose of determination of this bail application and will in no way be construed as an expression on the merits of the case. The trial court shall be absolutely free to arrive at its independent conclusions on the basis of evidence led unaffected by anything in this order.

Order Date :- 21.11.2023

Sumit Kumar