

Court No. - 16

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11966 of 2023

Applicant :- Sayem Yazdani

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

Counsel for Applicant :- Shobhit Harsh, Jatin Raheja, Ram Shubham, Shakti Kumar Sharma

Counsel for Opposite Party :- G.A., Manjusha Kapil

Hon'ble Subhash Vidyarthi, J.

1. Heard Sri Shakti Kumar Sharma, learned counsel for the applicant, Smt Parul Kant, learned A.G.A. for the State and Smt Manjusha Kapil and perused the records.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 0795 of 2023, under Sections 420, 406, 467, 468, 471, 504, 506 I.P.C., registered at Police Station Kotwali, District Barabanki.

3. The aforesaid case has been registered on the basis of an F.I.R. lodged on 13.07.2023 against the applicant and Fahad Yazdani, both of whom have been described as Directors of Yazdan Infrakan Private Limited and 3-4 other persons, stating that the informant had purchased a flat from the accused persons in August, 2020 for a sale consideration of Rs.85,00,000/-. Possession of the flat was not delivered and the project was demolished in the year 2022, as the construction was raised without sanction and building plan.

4. In the affidavit filed in support of bail application it has been stated that the applicant is innocent, he has been falsely implicated in the present case and he has no criminal history. Applicant's involvement in 14 other cases of similar nature has been disclosed in para 53 of the affidavit and in three cases the applicant has been granted bail.

5. Learned counsel for the applicant has submitted that the Hon'ble Supreme Court had observed in **Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736**, that: -

"13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In *G. Sagar Suri v. State of U.P.* (2000) 2 SCC 636, this Court observed:

"It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law,

should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 CrPC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may."

5. Learned counsel for the applicant has further submitted that the present FIR has been filed to pressurize the applicant to pay money to the informant, for recovery of which, no proceedings has been initiated by the informant.

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 and keeping in view the fact that the applicant is languishing in jail since 31.07.2023 whereas no proceeding for recovery of money has been initiated by the informant 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-Sayem Yazdani** be released on bail in Case Crime No. 0795 of 2023, under Sections 420, 406, 467, 468, 471, 504, 506 I.P.C., registered at Police Station Kotwali, District Barabanki 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.

(Subhash Vidyarthi, J.)

Order Date :- 12.10.2023
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