

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12789 of 2023

Applicant :- Piyush Mishra

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

Counsel for Applicant :- Shakeel Ahamd, Zubair Hasan

Counsel for Opposite Party :- G.A., Sarvesh Kumar Dubey

Hon'ble Mohd. Faiz Alam Khan, J.

1. Supplementary counter affidavit filed by the informant/complainant is taken on record.
2. Heard Shri Zubair Hasan, learned counsel for the accused/applicant, learned A.G.A. for the State as well as Shri Sarvesh Kumar Dubey, learned counsel appearing for the informant/complainant and perused the record.
3. This bail application has been moved by the accused/applicant- **Piyush Mishra** for grant of bail, in Case Crime No. 925 of 2019, under Sections 419, 420, 406, 504, 506 IPC, Police Station Gomit Nagar, District Lucknow, during trial.
4. Learned counsel for the accused-applicant while pressing the bail application submits that the accused-applicant has falsely been implicated in the instant case and he has not committed any offence as claimed by the prosecution.
5. It is further submitted that the FIR of this case has been lodged by the informant/Amit Kumar Singh alleging therein that an agreement had been executed between the applicant and the informant with regard to the payment of diesel which would be paid by the applicant in periodical instalments to the informant. However, the amount of Rs. 29,93,635/- had accrued, which was not paid by the applicant and when the said amount was demanded, the informant was intimidated and abused.
6. It is vehemently submitted that even if the case of the prosecution as emerging from the FIR as well as from the statement of the prosecution witnesses is taken on its face, the same would be purely of civil nature. The agreement was admittedly executed between the parties and some terms of the

said agreement are shown to have been violated and money which was required to be paid to the informant was not paid.

7. It is further submitted that on the happening of the Covid-19 pandemic, the applicant was released on interim bail/parole by a High Power Committee constituted under the orders of the Hon'ble Supreme Court. However, thereafter he did not receive any process of the trial court and was not aware of any coercive processes issued against him by the trial court and he was ultimately arrested on 3.9.2023 and since then, he is in jail.

8. It is further submitted that before being released on interim bail/parole under the orders of the Hon'ble Supreme Court, the applicant has been in jail in this case from 7.9.2019 to 12.4.2020 and now, he is in jail in this case since 03.09.2023. Thus, he has already been in jail in this case for about one and half years. All the offences charged against the applicant are triable by magistrate and there is no apprehension that the accused-applicant after release on bail, may flee from the process of law or may otherwise misuse the liberty.

9. It is further submitted that the criminal history of 10 cases has been explained in para no. 5 of the rejoinder affidavit and out of these 10 cases, one case is the present case, while out of 9 remaining cases, in two of such cases, the applicant is still in jail, in two cases he has been granted bail by the competent criminal court, while with regard to two other cases, final report has been submitted. However, no information is available with regard to remaining two cases bearing Case Crime Nos. 488 of 2019 and 544 of 2019 and it is undertaken that after his release on bail, the said cases shall be explained before the trial court by filing an affidavit.

10. It is vehemently submitted that as the applicant is in jail in this case, he may not be in a position to defend himself before the trial court. Charge sheet in the matter has already been filed. It is undertaken that the applicant shall remain present on each and every date as and when his presence would be required.

11. Learned A.G.A., on the other hand, submits that having regard to the manner in which the offence has been committed the applicant is not entitled for any relief.

12. Learned counsel for the informant/complainant opposes the prayer for bail of the applicant and submits that the applicant is not entitled for any discretion as he has not complied with the directions issued by the Hon'ble Supreme Court with regard to the surrender of under trials/convicts who have been released on interim bail/parole on the happening of Covid-19 pandemic.

It is also submitted that non-cooperation of the applicant is evident from his conduct as his earlier bail application was dismissed for want of prosecution on 4.7.2022 as the applicant had failed to surrender before the trial court in compliance with the directions of the Supreme Court. Attention of this Court is also drawn towards the order-sheet of the trial court in order to show that continuously coercive processes were issued against the applicant.

13. Having heard learned counsel for the parties, it is reflected that so far as the merits of the case is concerned, an agreement is shown to have been executed between the parties with regard to the payment of some money. The terms of that agreement are shown to have been violated resulting in non-payment of the payment to the informant. The defence of the applicant appears to be that non adhering or non-compliance of the terms of a written contract may not give rise to any criminal consequence in absence of requisite intention. So far as the allegation of non-cooperation by the applicant is concerned, the order-sheet of the trial court has been relied on by the prosecution/informant in order to show that the applicant has not complied with the directions of the Hon'ble Supreme Court and had not surrendered before the trial court, as required. The order-sheet placed before this Court through supplementary counter affidavit dated 21.12.2023 would reveal that the non-bailable warrants have been issued by the trial court against the applicant. In the whole of the order-sheet, nowhere it is mentioned that any processes of the trial court issued against the applicant have ever been served, while the defence of the applicant is that he was not aware of the issuance of any coercive processes against him by the trial court, which prima facie appears to be fortified by the ordersheet placed on record. The criminal history of the applicant in the considered opinion of this Court, appears to have been explained. However, the same may also be taken care of by providing a time limit to the applicant to file an affidavit before the trial court with regard to those criminal cases which are stated to be not in the knowledge of the applicant. Charge sheet in the matter has already been filed. The presence of the applicant could be secured before the trial court by placing any adequate conditions.

14. Having regard to the reasons mentioned herein before and keeping an eye on the fact that all the offences alleged against the applicant are triable by magistrate and the applicant has already been in jail in this case cumulatively for about two years and without expressing any opinion on the merits and demerits of the case, I am of the considered view that applicant has made out a case for bail. The bail application is **allowed**.

15. Let the applicant- **Piyush Mishra** involved in the aforesaid case be released on bail on 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.

(iv) Within 30 days from from his release from prison, the applicant shall file an affidavit before the trial court explaining all the cases which are being shown as the criminal history of the applicant.

16. In case of breach of any of the above conditions, it shall be a ground for the trial court to cancel the facility of bail of the applicant granted by this Court.

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

18. Observations made herein-above are only for the purpose of disposal of bail application and the same shall not have any bearing on the trial of the case.

19. The trial court is directed to make all out efforts to conclude the trial keeping in view the provisions contained under Section 309 CrPC.

Order Date :- 21.12.2023
Shravan