

Court No. - 16

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13854 of 2023

Applicant :- Vinod Mishra

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Home Deptt. Lko.

Counsel for Applicant :- Ajmal Khan, Javed Khan

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi, J.

1. Heard Sri Ajmal Khan, the learned counsel for the applicant, Sri Rajesh Kumar Shukla, the learned A.G.A. for the State as well as Sri R.B.S. Rathaur, Advocate who has put in appearance on behalf of the informant and filed his vakalatnama, which is taken on record.

2. The application seeking release of the applicant on bail in Case Crime No. 181 of 2015, under Section 364/34, 120-B I.P.C., registered at Police Station Kunda, District Pratapgarh.

3. The aforesaid case has been registered on the basis of FIR lodged on 23.05.2015 alleging that the victim Devendra Pratap Singh was abducted by accused-Diwakar Tiwari and some unknown persons on 23.05.2015, while he was traveling in his own car alongwith the informant (Neeraj Singh). It is alleged that he has been abducted by the aforesaid persons with an intention to commit his murder due to contractual rivalry.

4. The trial court has separated the trial of two co-accused persons and has recorded statements of as many as four prosecution witnesses, including the informant and the victim Devendra Pratap Singh. Copies of statement recorded by the trial court have been annexed along with the affidavit in support of the bail application. The informant Neeraj Singh has not named the applicant either in the F.I.R or in his statement recorded by the trial court. He stated that he had given the statement to the Investigating Officer upon a suggestion of other persons. He further stated that no identification parade was carried out for identification of any accused persons by him.

5. The victim Devendra Pratap Singh also stated that subsequent to lodging of the report, he came to know that Diwakar Tiwari @ Dabloo and Vinod Mishra were his

abductors, though he did not disclose the source of the information. He also stated that no identification was carried out for identification of the culprits by him. In his cross-examination, he stated that he could not identify the accused Diwaker Tiwari @ Dabloo who was present in the court and he has mentioned the name of Diwaker Tiwari @ Dabloo upon suggestion of some other persons.

6. Although, the informant did not mention the applicant's name in their statement and so did another witness Mohammad Saeed, P.W. 4/Anand Dev Pandey stated that on 12.05.2015, he had gone to the office of one Shiv Prakash Mishra Senani at Lucknow along with one Mahesh Kumar Pandey and Manoj Kumar Tiwari were present there. He stated that another person present there said that Devendra Pratap Singh was not agreeing for the tender and he was bent upon submitting his tender whereupon Manoj Kumar Tiwari had stated that he would deal with the matter by sending Vinod Mama and Anuj-the applicant.

7. However, during his cross-examination, the aforesaid witness stated that he had left the place along with Mahesh Kumar Pandey merely two minutes after the applicant had reached there and during this period of two minutes, only niceties were exchanged between them. Nothing was asked either from the witnesses or Mahesh Kumar Pandey or from any other persons during this period.

8. The learned counsel appearing on behalf of the applicant has submitted that the applicant is not named in the F.I.R and he has subsequently been implicated alleging that he was present at the time of commission of offence. The sole witness of the alleged conspiracy is P.W.4/Anand Dev Pandey, and although he had stated in his examination-in-chief that the applicant had said that he would get the matter settled by sending two persons, this statement does not indicate hatching of any conspiracy for commission of the alleged offence. Moreover, in his cross-examination, the witness stated that he had stayed there merely for two minutes and during this period only niceties were exchanged, which indicates that his allegation in the examination-in-chief was not true. Co-accused-Diwakar Tiwari @ Dabloo has been granted bail by this Court by means of the order dated 29.03.2016 passed in Bail No.11509 of 2015. Applicant's criminal history of 5 cases has been explained in the affidavit as per which he has already been granted bail in those cases; and one case relates to Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 in which the bail application has not been filed.

9. The learned A.G.A. has also opposed the prayer of the bail. Sri R.B.S. Rathaur, the learned counsel for the informant has submitted that the F.I.R. in question was lodged on 23.05.2015. The applicant evaded his arrest and he did not cooperate with the trial even after issuance of a proclamation under Section 82 Cr.P.C. on 21.10.2022. He did not appear for about one year and he surrendered only on 12.09.2023 after more than eight years since lodging of the F.I.R. For this reason the applicant's case has not even been committed to the court of Sessions. He has further submitted that the evidence recorded during trial of other co-accused persons would not ensue to the benefit of the applicant.

10. Having considered the aforesaid facts and circumstances of the case, what prima facie appears from the material available before the Court at this stage is that the F.I.R alleges abduction of one Devendra Pratap Singh committed on 23.05.2015 and the alleged victim returned on his own within two hours of lodging of the F.I.R; that the applicant is not named in the F.I.R or in the statements of the informant and the victim recorded by the trial court; Co-accused persons Diwakar Tiwari @ Dabloo, Manoj Kumar Tiwari and Anuj Kumar Tiwari @ lalla have been enlarged on bail by this court, coupled with the fact that the applicant is languishing in jail since 12.09.2023 and without making any observations 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.

11. Accordingly, this bail application stands **allowed**.

12. Let the **applicant-Vinod Mishra** be released on bail in the aforesaid case, on furnishing a personal bond and two sureties each in the like amount to the satisfaction of Magistrate/Court concerned, subject to the 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.

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(Subhash Vidyarthi, J.)

Order Date :- 23.11.2023
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