

Court No. - 16

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13902 of 2023

Applicant :- Faizal @ Faisal Wasiq Warsi Name As Per Prosecution Faizal @ Faisal

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

Counsel for Applicant :- Mohsin Khan, Atul Verma, Hari Krishna Verma, Mohd Agha Haider Rizvi

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi, J.

1. Heard Sri Atul Verma, learned counsel for the applicant, Sri J.S. Tomar, learned A.G.A.-I for the State and Sri G.K. Dikshit, Advocate, who has put in appearance on behalf of the victim and filed his vakalatnama, which is taken on record.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 131 of 2021, under Sections 406/419/420/467/468/471/120-B I.P.C., registered at Police Station Sushant Golf City, District Lucknow.

3. The aforesaid case has been registered on the basis of an F.I.R. lodged on 03.04.2021 by an official of U.P. Medical Supplies Corporation Limited (hereinafter to be referred to as the UPMSCL), stating that one M/s Mahadev Exports had given a complaint to the police annexing therewith supply order of PPE Kits worth Rs.9,62,90,726/- which turned out to be fake. The supply order has purportedly been issued by the General Manager of the Corporation which post does not exist. The aforesaid firm had participated in the tender process but its bid had been rejected for technical reasons. It appears that a forgery has been committed for providing wrongful gains to some persons and damaging the image of the corporation.

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. A copy of the statement of the victim Neeraj Ahuja recorded under Section 161 Cr.P.C. has been annexed with the affidavit filed in support of the application, wherein he stated that he is the General Manager of M/s Mahadev Exports. Kamlesh Gupta, Rajesh Agarwal and Deena Nath had made an offer to get supply orders for PPE kits and masks to UPMSCL for which the victim would have to pay Rs.17,00,000/- towards expenses and bribe. The victim paid Rs.8,00,000/- to the aforesaid three persons in various installments and thereafter those persons informed him that the tender had been allotted in favour of the victim's company. The victim supplied PPE kits and masks worth Rs.9,62,90,726/- to Kamlesh Gupta and the goods were received by Kamlesh Gupta. The applicant who represents the victim's company had asked the victim not to make further supplies of goods until he receives payment for supplies made earlier but he did not accept the applicant's suggestion and continued to make supplies. When the victim did not receive value of the goods he contacted the office of UPMSCL, whereupon it came to light that the supply orders were fake.

5. The victim further stated in his statement recorded under Section 161 Cr.P.C. that the applicant had been engaged by his company as a commission agent and he may also be involved with the other accused persons in commission of the offence. A copy of a letter dated 28.05.2020 issued to the applicant authorizing him to act as a company's representative/commission agent has been annexed with the affidavit filed in support of the application. Sensing some trouble, the applicant had file an application for anticipatory bail before the sessions court on 14.07.2023. On 28.07.2023 the Investigating Officer had submitted a report to the Court stating

that the complicity of the applicant in commission of offence had not come to light till that date and on the basis of the aforesaid report the anticipatory bail was rejected by means of order dated 05.08.2023 for the reason that there was no apprehension of applicant's arrest. However, soon thereafter the applicant was arrested and was lodged in jail on 09.10.2023. It was stated in the affidavit filed in support of the application that the applicant has never sent any e-mail to the victim regarding the supply order issued by the UPMSCCL and he has not forged any document or used any such document as genuine.

6. The learned A.G.A. has opposed the prayer for bail. The learned counsel for the victim has vehemently opposed the application and he has submitted that he has been cheated by all the accused persons and because of their influence the investigation could not be completed for such a long period and it is only after the change of Investigating Officer that the applicant has been taken into custody. The learned counsel for the victim has further submitted that the applicant is involved in some other cases, the particulars whereof could not be pointed out by him. However, as per the instructions received by learned A.G.A. the applicant has no other criminal history.

7. Having considered the aforesaid facts and circumstances of the case and keeping in view the fact that the alleged victim who has come forward to object the application before this court has himself not lodged any F.I.R.; that the F.I.R. lodged by an official of UPMSCCL on 03.04.2021 mentions misuse of the corporation's name for commission of a fraud by unknown persons; that in the statement of the victim recorded under Section 161 Cr.P.C. he claims to have paid bribe to three persons, not including the applicant for getting an order from UPMSCCL for supply of PPE kits and masks and to have paid

money to those three persons; that the victim did not make any allegation of demand of any amount by the applicant or any payment made to him; that the victim has stated in his statement that the applicant had warned him not to make any further supplies till he receives payment for the earlier supplies and he stated that he did accept the advice of the applicant; that the victim merely expressed an apprehension that the applicant might have been involved in the commission of offence without alleging any act committed by the applicant, which may amount to commission of offence coupled with the fact that the applicant has no previous criminal history and he is languishing in jail since 09.10.2023 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-Faizal @ Faisal Wasiq Warsi Name** as Per Prosecution **Faizal @ Faisal** 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 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 :- 24.11.2023
Ram.