

Court No. - 16

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14919 of 2023

Applicant :- Jaishankar Tiwari @ Samant Tiwari

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

Counsel for Applicant :- Ramakar Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi,J.

1. Heard Sri Ramakar Shukla, learned counsel for the applicant, Sri Manish Kumar Pandey, learned A.G.A. for the State and Sri Amitav Singh, learned counsel for the informant and perused the records.

2. Learned counsel for the informant has filed a short counter affidavit and learned counsel for the applicant states that he does not want to file any rejoinder affidavit, therefore, I proceed to decide the application.

3. The instant application has been filed seeking release of the applicant on bail in Case Crime No.238 of 2023, under Sections 409, 419, 420, 468, 471, 504, 506 I.P.C. and Section 65 Information Technology Act, registered at Police Station Kurebhar, District Sultanpur.

4. The aforesaid case has been registered on the basis of an F.I.R. lodged on 15.09.2023 against 5 persons, including the applicant, by a Manager of Secured Value India Ltd., which is engaged in loading/unloading of cash in ATM and BNA machines of various bank. For this purpose, the Company had appointed several persons as custodians and agents including the accused persons. Passwords/Route keys were provided to the custodians and agents to enable them to load/unload cash in machines. Shortage of various sums was found in various machines.

5. 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.

6. It has further been stated that one of the co-accused persons, Ashish Pandey has been granted anticipatory bail by means of the order dated 18.11.2023 passed by this Court in Criminal Misc Anticipatory Bail Application u/s 438 Cr.P.C. No.2644 of 2023.

7. Aforesaid co-accused was granted anticipatory bail in absence of any counter affidavit having been filed and one of the reasons recorded in the order dated 18.11.2023, was that FIR mentions that co-accused, Rohit Singh was an employee of the Company whereas in the statement recorded by the investigating officer, it was stated that he was an former employee.

8. In the short counter affidavit, it has been stated that upon reconciliation of amounts by going through electronic journals and CCTV footage etc., it came to light that the accused persons had committed irregularities in loading/unloading cash and they had permitted access of unauthorized persons to the ATM while loading and unloading cash.

9. The FIR states that shortage of fund was found on several BNA machines on two particulars route of Lucknow. The FIR has been lodged in police station Kurebhar, District Sultanpur. The FIR states that on 08.09.2023, the informant and Regional Manager of the Company, Adarsh Kumar have gone Kurebhar in search of accused Sanjeev Singh and they met Sanjeev Singh with the applicant at Kurebhar and upon demanding the refund of money, he abused and threatened the informant.

10. Learned counsel for the applicant has submitted that all the ATMs in which alleged irregularities were committed are situated at Lucknow and the complainant has also given his temporary and permanent address of Lucknow but the FIR has been lodged at Police Station Kurebhar, District Sultanpur and learned counsel for the

applicant has submitted that this has been done because the informant exercises some cloud in district Sultanpur.

11. Replying to the aforesaid objection, learned counsel for the informant has submitted that the recovery has been made from the applicant in District Sultanpur and the informant was threatened in district Sultanpur, therefore, in view of the provisions of Section 178(d) and 181(4) Cr.P.C., the inquiry or trial may be held in District Sultnapur.

12. Having considered the aforesaid facts and circumstances of the case and keeping in view the fact that as per the FIR allegations, alleged irregularities were committed during the period 04.07.2023 to 10.08.2023; that the FIR lodged on 15.09.2023, does not make a mention of the exact amount of shortage; that the applicant allegedly threatened the informant at Sultanpur on 08.09.2023 but the FIR was not lodged promptly and it was lodged only after a week; that the FIR describes Rohit Singh as an employee of the Company, which assertion has subsequently been retracted and he has been said to be a former employee of the Company; that a co-accused has been granted anticipatory bail on similar allegations as are against the applicant; that Rs.5,00,000/- are said to have been recovered from the applicant's house, which he claims of himself 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.

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

14. Let the **applicant**-Jaishankar Tiwari @ Samant Tiwari be released on bail in aforementioned 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 :- 20.12.2023
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