

Court No. - 15

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 4874 of 2023

Applicant :- Suresh Kumar Tanwar

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

Counsel for Applicant :- Abhishek Tiwari, Anilesh Tewari, Purnendu Chakravarty, Satya Prakash Mishra, Shivanshu Goswami

Counsel for Opposite Party :- G.A., Nadeem Murtaza, Sudhanshu S. Tripathi

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Mr. Purnendu Chakravarty, along with Mr. R.P. Shukla, learned counsels appearing for the applicant, learned A.G.A. for the State, as well as Mr. Nadeem Murtaza, assisted by Mr. Sudhanshu Shekhar Tripathi, learned counsel appearing for the complainant/informant.

Supplementary counter affidavit filed on behalf of the informant/complainant is taken on record.

2. This bail application has been moved by the accused/applicant - **Suresh Kumar Tanwar** for grant of bail in FIR/Case Crime No.0305 of 2021, under Sections 406, 419, 420, 467, 468 and 471 IPC lodged at Police Station Ghazipur, District Lucknow North, during trial.

3. Mr. Purnendu Chakravarty, learned counsel for the applicant, while pressing the bail application, submits that the applicant has been falsely implicated in this case and, he has not committed any offence, as claimed by the prosecution. It is vehemently submitted that the allegations, as are levelled in the FIR, are canvassing a civil dispute between the parties, however, the same has been given the colour of criminal prosecution by the informant. Elaborating further, it is submitted that an agreement had taken place between the informant- Kallu (owner of the land) and the applicant on 10.02.2020 whereby it was agreed to do mining-operations on the land owned by above-mentioned Kallu bearing Khasra No.24, ad-measuring

1.557 hectares situated in village Rampur, Raighati, Tehsil Laksar, District Haridwar and the informant in order not to pay the further liabilities, as agreed between the applicant and the informant, has lodged the FIR of the instant case.

4. It is further submitted that the mining-lease was earlier assigned/allotted in favour of one Mr. Kartar Singh, resident of village Rampur, Tehsil Laksar, District Haridwar for mining in the land bearing Khasra No. 24, ad measuring 1557 hectares and after death of above mentioned Kartar Singh the said mining-lease was transferred in favour of above-mentioned Kallu (son of Kartar Singh) and vide order dated 25.10.2016, the aforesaid mining-lease was registered on 19.05.2018 for the next period of five years. It is also submitted that aforesaid Kartar Singh had executed a power of attorney in favour of the applicant to work on the mining-operations on the said field and, it was thereafter an agreement dated 10.02.2020 was executed between the applicant, informant and owner of the land -Kallu and the conditions with regard to business was specifically defined and agreed upon by the parties. In this regard true copies of the power of attorney as well as agreement placed as Annexure Nos. 3 and 4 to the bail application have been highlighted .It is further submitted that by any stretch of imagination the dispute between the parties may not be termed as criminal, as all the parties are driving their rights on the basis of a written agreement which is also containing an arbitration clause and if any party was aggrieved by the conduct of the other party, the only option available for him was to approach the appropriate forum for invocation of arbitration clause.

5. It is also submitted that during the course of investigation the applicant has approached this Court by filing Writ Petition Misc. Bench No.13759 of 2021 wherein an stay order was granted vide order dated 06.07.2021. It is further submitted that the applicant has been earlier working with the aforesaid Kallu (owner of the land) and has already given much more money to him in compliance of the said agreement, however, the applicant is not having any knowledge regarding termination of power of attorney executed by Kallu in his favour as he has not received any information with regard to its termination. It is further submitted that the allegations with regard to submitting false and forged documents with certain government departments with regard to mining business are false and

concocted as even a single complaint has never been made by any such department against the applicant. It is vehemently submitted that the informant of this case instead of sharing of investment started harassing the applicant in order to exert much amount of money and when he refused the same has resulted into lodging of the various FIRs against him. It is further submitted that the applicant is an innocent person, having no criminal history before the present controversy and all the FIRs lodged against him are pertaining to the dispute with the informant of this case who is a very influential person and is close to the ruling political party. It is also submitted that the charge-sheet in this case has been filed and the applicant is languishing in jail in the case since 18.10.2022.

6. Shri Nadeem Murtaza, appearing on behalf of the informant/complainant vehemently opposes the plea of bail of the applicant on the ground that the conduct of the applicant is such which renders him unfit for bail. Elaborating further, it is submitted that the agreement between the applicant, informant and Kallu (owner of the land) was executed on 10.02.2020 and thereafter the informant had transferred Rs.60 Lakh in the account of the firm of the applicant, namely, 'Shivganga Associates', however, the applicant in furtherance of a conspiracy concealed the agreement taken place between the said parties and by moving forged documents in the concerned departments started mining operations alone and, therefore, the informant was deceived and defrauded of huge amount. It is further submitted that on being contacted the owner of the land, namely, Kallu informed that after the agreement executed between the parties the power of attorney could only be executed by him (Kallu) on 27.02.2020 and finding suspicious activities of the applicant, he got the same cancelled on 28.09.2020.

7. It is further submitted that the applicant had earlier approached this Court by filing a writ petition and his arrest was stayed till the next date of listing, however, he did not cooperate in the investigation and in this scenario the informant had approached this Court by filing Criminal Misc. Writ Petition No.283 of 2022 wherein the direction for expeditious investigation was passed and thereafter on filing of charge-sheet the applicant approached this Court by filing two Applications under Sections 482 CrPC bearing nos.2977 of 2022 and 4496 of

2022 and vide order dated 24.05.2022 passed in the said 482 Application No.2977 of 2022 the order of cognizance and summoning was stayed till the next date of listing, however, during the pendency of this application, it was found that there is an element of settlement as the applicant agreed to deposit Rs.35 Lakh in favour of the informant, however, he placed a forged/fake letter of the bank in order to show that their bank-account has been freezed and they could not pay the amount, which was acknowledged by the coordinate Bench of this Court on 21.09.2022 and it was directed that the said letter be investigated and on an inquiry the said letter was found forged and thereafter the coordinate Bench of this Court vide order dated 28.09.2022 directed to initiate criminal contempt proceeding against the applicant and co-accused - Balbir Singh Pundir. It is vehemently submitted that even charges in the contempt proceedings were framed but by placing wrong facts the applicant obtained an order of discharge on 16.10.2023. It is also submitted that the applicant has also not explained his criminal history adequately of an FIR which was instituted against him in the year 2018 and since he has defrauded the Court by placing false documents, it is on the cards that after obtaining regular bail, he will not be available for trial and, thus, he is not entitled to be released on bail.

8. Learned A.G.A. also opposes the bail pleas of the applicant on the ground that the applicant has committed a heinous crime and, therefore, he is not entitled to be released on bail.

9. In rebuttal, learned counsel for the applicant has relied on the order of the Division Bench of date 16.01.2023 passed in Contempt Application (Criminal) No.8 of 2022, highlighting that co-accused Balbir Singh Pundir had already been discharged by the Division Bench in contempt proceedings and by passing order dated 16.01.2023 the Division Bench has noted that affidavit in the 482 application was filed by Balibir Singh Pundir and also that inadvertently wrong bank-account numbers were typed in the affidavit which resulted into inconvenience caused to the Court and after getting knowledge of true facts the contempt Court has discharged notices issued against the applicant also and, thus, the proceedings with regard to initiation of criminal proceeding against the applicant may not be read against him as the contempt notice has been discharged by a competent Court and that order has not been

challenged in any higher forum. Learned counsel for the applicant has also relied upon the observations made by the coordinate Bench of this Court while passing order dated **31.07.2023 in Criminal Misc. Anticipatory Bail Application U/s 438 CrPC No.57 of 2023 (Vijay Pal Prajapati Vs. State of U.P.)** wherein it has been opined that now a practice has developed to set the criminal law into motion for putting pressure on the parties of commercial transactions.

10. Having heard learned counsel for the parties and having perused the record, it is revealed that an agreement to do mining operations on the land belongs to one Kallu was entered into between the applicant, Kallu (owner of the land) and the informant. By this agreement, the investment of the money was to be made by the informant and permission etc. is to be obtained by the applicant. It was also agreed, as is evident from para-5 of the agreement, that if any deficit or defect occurs in execution of the licence or it is cancelled, the applicant would be responsible to refund the invested money to the informant with 18% interest. A payment schedule is also stated in para-12 of that agreement whereby the informant was required to pay Rs.3 Crores to second party i.e. Kallu and applicant for the use of mining operations over the mining site. It is further agreed in clause-12 (c & d) of the agreement that Rs. 3 Crores shall be paid in installments of 100 Lakh each and the first party will invest Rs.100 Lakh in the mining and 60% of the amount shall be paid at the time of the agreement and balance shall be paid from the revenue generated from the mining business. Significantly, the agreement also contains an arbitration clause in the form of clause-22. With regard to the allegations and counter allegations levelled by the parties against each other, the contention of the informant is that she has been defrauded by the applicant of Rs. 60 Lakh, while the contention of the applicant is that the informant did not invest as per the agreement and instead of paying the rest of the money, she has lodged the FIR to pressurize the applicant. It is undisputed that the owner of the land- Kallu was a party to the agreement executed between the parties and since he was signatory to that agreement, execution of power of attorney by him on any subsequent date (after the date of execution of agreement between the parties) may not be of much significance. The conduct of the applicant which has been highlighted by the

learned counsel for the informant/complainant by showing that proceedings of criminal contempt were initiated against him may also not be of much significance at this stage as the contempt Court has admittedly discharged the contempt notices issued to him. The instant dispute appears to be between the partners and the same may better be resorted through mediation process or may be adjudicated at any other forum i.e. arbitration or during the course of trial of the instant case. Since the charge-sheet in this case has already been filed, I do not find any good ground to detain the applicant any further in jail as he has already been in jail in this case since 18.10.2022 and admittedly the conclusion of the trial may take sometime. The alleged discrepancy in explaining the criminal history of the applicant may not be detrimental to the liberty of the applicant as one of the FIRs has been lodged against him while he was in jail in this case and with regard to an FIR of the year 2018, it is stated at the bar that the applicant was not having any knowledge of the same as he was detained in prison since long and no process etc of that case has ever been received by him.

11. Keeping in view all the facts and circumstances of the case and for the reasons given herein before, the instant bail application is **allowed**.

12. Let the accused/applicant - **Suresh Kumar Tanwar**, involved in above-mentioned case, be released on bail on his 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). The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may

proceed against him under Section 229-A of the Indian Penal Code;

(v). In case, the applicant misuses the liberty of bail and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the Court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him in accordance with law, under Section 174-A of the Indian Penal Code; and

(vi) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of his bail and proceed against him in accordance with law.

13. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

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

15. Observations made herein-above by this court are only for the purpose of disposal of this bail application and shall not be construed as an expression on the merits of the case.

Order Date :- 18.1.2024

MVS/-