

**Court No. - 76**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 18322 of 2023

**Applicant :-** Rakesh Kumar @ Rakesh Kumar Mishra

**Opposite Party :-** State of U.P. and Another

**Counsel for Applicant :-** Prabhash Pandey

**Counsel for Opposite Party :-** G.A.

**Hon'ble Vikram D. Chauhan, J.**

1. Learned A.G.A. submits that instructions have been received and he has no objection in case the bail application is heard on merits.

1A. Learned counsel for the applicant has filed affidavit of compliance on behalf of the applicant, the same is taken on record.

2. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.

3. This Court on 12.05.2023, passed the following order:

*" 1. Present application under Section 439 Cr.P.C. has been filed seeking bail in FIR No. 0024 of 2020 registered on 16.06.2020 under Sections 419, 420, 406 IPC at P.S. Dashaswamedh, District Varanasi.*

*2. The complainant leaving her country Italy relations and parents, came to India to get educated in Hindu scriptures and adopt the Hindu religion and got the citizenship leaving her country Italy. The complainant came in contact with the elder brother of the accused/applicant Bharat Giri, who adorns saffron look and claims to be a Sanyasi. The accused/applicant and his brother had taken substantial amount from the complainant on the pretext of buying a property in the name of Ashram. The complainant remained in contact with the accused-applicant and his brother from 2007 to 2017. Property was bought from the funds provided by the complainant. However, the said property was in the name of Bharat Giri. After demise of Guru of Bharat Giri, who was staying in the said property after it was bought from funds of the complainant, the accused-applicant and Bharat Giri have been trying to dispose of the said property, and evicting the complainant from the said property. The accused-applicant has also taken some money from the complainant, which he has not paid.*

*3. Learned counsel appearing for the accused-applicant submits that though the complainant has given only Rs.1,00,000/- to him but he is willing to pay Rs.5,00,000/- to the complainant within a period of one month. He, therefore,*

*submits that he may be enlarged on interim bail subject to deposition of a bank draft for a sum of Rs.5,00,000/- before the trial court on or before 05.07.2023 as a condition precedent for enlarging him on interim bail for a period of one month.*

*4. Considering the aforesaid submission of the learned counsel appearing for the accused-applicant, the accused-applicant is admitted on interim bail till 10.07.2023 on furnishing personal bond and two sureties to the satisfaction of the trial court concerned:-*

*(i) The accused-applicant shall deposit a bank draft for a sum of Rs.5,00,000/- in the name of the complainant before the trial court on or before 05.07.2023, and trial court after due verification shall disburse the said bank draft to the complainant.*

*(ii) In case the accused-applicant does not pay the amount of Rs.5,00,000/- to the complainant through a bank draft, on or before 5.07.2023, the accused-applicant shall be taken into custody forthwith and this application shall be treated to have been rejected.*

*5. List this case on 10.07.2023. "*

4. Learned counsel for the applicant submits that in compliance of the aforesaid order, the applicant has deposited Rs. 5,00,000/- by way of demand draft before the court below and as per the learned counsel for the applicant the same has already been received by the informant. Learned counsel for the applicant further submits that the applicant has complied with the aforesaid order dated 12.05.2023 and in this respect a compliance affidavit has also been filed. Therefore, the applicant is entitled to be enlarged on bail. The applicant has no criminal history. Applicant is languishing in jail since 10.03.2023 and in case he is released on bail, he will not misuse the liberty of bail and will cooperate in the trial.

5. Learned A.G.A. does not dispute the aforesaid fact and submits that he would have no objection in case, the bail is granted to the applicant.

6. Learned AGA has not brought any fact or circumstances to indicate criminal history or antecedents of the applicant which would disentitle the applicant for Bail.

7. It is not the case of the State that the applicant has not cooperated in the investigation or proceedings before the trial court.

8. The principle that Bail is a rule and Jail is an exception has been well recognised by Apex Court more specifically on the touch stone of Article 21 of the Constitution. The said principle has been

reiterated by the Apex Court in **Satyendra Kumar Antil Vs Central Bureau of Investigation and another, 2022 (10) SCC 51**. Learned AGA has not shown any exceptional circumstances which would warrant denial of bail to the Applicant.

9. No material, facts or circumstances has been shown by learned AGA that the accused may tamper with the evidence or witnesses or the accused is of such character that his mere presence at large would intimidate the witnesses or that accused will use his liberty to subvert justice or tamper with the evidence.

10. It is settled principle of law that the object of bail is to secure the attendance of the accused at the trial. No material particulars or circumstances suggestive of the applicant fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like have been shown by learned AGA for the State.

11. Learned AGA for the State has not shown any material or circumstances that the accused/applicant is not entitled to bail in larger interests of the public or State.

12. Considering the facts and circumstances of the case, nature of offence, evidence, complicity of the accused, submissions of learned counsel for the parties and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is **allowed**.

13. Let the applicant **Rakesh Kumar @ Rakesh Kumar Mishra** involved in Case Crime No. 0024 of 2020, under Sections 419, 420 and 406 I.P.C., Police Station- Dashaswamedh, District-Varanasi arising out of Criminal Case No. 5721 of 2021, be released on bail on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to the following conditions:-

(i). The applicant will not tamper with the evidence during the trial.

(ii). The applicant will not pressurize/intimidate the prosecution witness.

(iii). The applicant will appear before the trial court on the date fixed, unless personal presence is exempted and/ or the applicant shall make himself available for interrogation by a police officer as and when required.

(iv). The applicant shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.

(v). The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

(vi). The applicant shall not leave India without the previous permission of the Court.

(vii). In the event, the applicant changes his residential address, he shall inform the court concerned about his new residential address in writing.

14. In case of breach of any of the above condition, the prosecution shall be at liberty to move bail cancellation application before this Court.

**Order Date :- 18.7.2023**

Sumit Kumar