

Court No. - 78

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 51819 of 2021

Applicant :- Rambhawan

Opposite Party :- State Of U.P Through Its Secretary Home Up At Lucknow

Counsel for Applicant :- Girja Shanker Mishra, Noor Mohammad

Counsel for Opposite Party :- G.A.

Hon'ble Shree Prakash Singh, J.

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

The instant bail application has been filed on behalf of the applicant with a prayer to release the applicant on bail during the trial in Case Crime No. 159 of 2021, under Sections 380, 457 and 411 IPC, P.S.- Purandarpur, District - Mahrajganj.

It is contended by learned counsel for the applicant that the applicant is innocent and he has been falsely implicated in the present case. As per version of FIR, certain jewelries were said to be stolen by the unknown persons. He next submits that applicant was not named in the FIR and police has planted the aforesaid recovery from the applicant as shown in the recovery memo. He next submits that identification of goods have still not been done. He added that applicant has been connected in some other cases after the instance case. He next submits that there is no material evidence against the applicant so as to connect him in the instant matter. He further submits that criminal history of the applicant has been explained in para 10 of the bail application. The applicant is in jail since 29.08.2021. In case he is granted bail, he will not misuse the liberty and would cooperate in the trial proceedings.

Per contra, learned A.G.A. opposed the prayer of bail and submits that applicant was involved in committing the aforesaid offence and as per recovery memo certain articles were recovered from his possession.

Having heard the learned counsel for the parties and after perusal of record, I find that applicant was not named in the FIR; articles said to be stolen was not identified and further criminal history of the applicant has been explained in para 10 of the bail application, coupled with the fact that he is languishing in jail since 29.08.2021, thus without commenting on the merits of the case, I find it a fit case for bail.

Considering the submissions of learned counsel of both sides, nature of accusation and severity of punishment in case of

conviction, nature of supporting evidence, *prima facie* satisfaction of the Court in support of the charge, reformatory theory of punishment and considering larger mandate of the Article 21 of the Constitution of India and the dictum of Apex Court in the case of **Dataram Singh v. State of U.P. and another, (2018) 3 SCC 22**, without expressing any view on the merits of the case, I find it to be a case of bail.

Let the applicant- **Rambhawan** involved in the aforementioned crime be released on bail, on his furnishing a personal bond and two sureties each in the like amount, to the satisfaction of the court concerned, with the following conditions:-

(1) The applicant shall not tamper with the prosecution evidence by intimidating/ pressurizing the witnesses, or otherwise during the investigation or trial;

(2) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. He 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;

(3) 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.; and

(4) In case, the applicant misuses the liberty of bail during trial 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, the trial court shall initiate proceedings against him, in accordance with law under Section 174-A of the Indian Penal Code.

The identity, status and residential proof of sureties will be verified by the court concerned and in case of breach of any of the above conditions, the court below shall be at liberty to cancel the bail and send the applicant to prison.

It is clarified that the observations made in this order are strictly confined to the disposal of this bail application and must not be construed to have any reflection on the merits of the case.

Order Date :- 8.3.2022

Ujjawal