

Court No. - 79

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 50896 of 2022

Applicant :- Jamiruddin Sheikh

Opposite Party :- State of U.P.

Counsel for Applicant :- Vikash Chandra Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi,J.

1.Heard Sri Vikash Chandra Tiwari, the learned counsel for the applicant, Sri Shashi Shekhar Tiwari, the learned A.G.A. for the State and perused the record.

2.The present bail application has been filed by the applicant with the prayer to enlarge him on bail in Case Crime No. 650 of 2021, under Sections 379, 34 I.P.C., P.S. Tajganj, District Agra.

3.The aforesaid case has been registered on the basis of an application under Section 156(3) Cr.P.C. filed by an Advocate on behalf of the company, which maintains cash in ATMs, alleging that between 06.07.2021 and 10.07.2021, Rs. 8,79,500/- have been stolen from an ATM. It is mentioned in the complaint that when the FIR was not registered by the police, an information was sent to the Senior Superintendent of Police on 02.10.2021.

4.The learned counsel for the applicant has submitted that the co-accused Shahnwaj Chaudhary and Mohd. Umar have already been granted bail by means of orders dated 23.11.2022 passed by this Court in Criminal Misc. Bail Applications No. 50915 of 2022 and 50894 of 2022 respectively.

5.It is further submitted by the learned counsel for the applicant that the case set up against the applicant is similar to that set up against the other co-accused persons, who have already been released on bail, therefore, the applicant is also entitled to be released on bail on the ground of parity.

6.It has been averred in the affidavit filed in support of the bail application that the applicant is an innocent person, he has been falsely implicated in the case after the applicant was arrested in Case Crime No. 172 of 2021 under Sections 420, 380, 34, 467, 468, 471, 474, 120-B IPC and 65 and 66 of the Information Technology Act, P.S. Indirapuram, District Ghaziabad. The applicant is having no previous criminal history and he is in jail since 30.11.2021. It has also been stated in the affidavit that

there is no possibility of the applicant tampering with any evidence and in such circumstances, the applicant is entitled for bail. It is also stated in the affidavit that the applicant will not misuse the liberty of bail and he will fully cooperate in the investigation. It has further been stated that after the applicant's arrest in Case Crime No. 172 of 2021, the applicant has been arrested in six other cases, including the present case, in five of which the applicant has already been granted bail.

7.Per contra, the learned Additional Government Advocate has opposed the prayer for grant of bail but he could not dispute that the case set up against the applicant is similar to that set up against the other co-accused persons, who have already been released on bail.

8.Having considered the aforesaid facts and submissions and keeping in view the fact that the alleged theft had been committed between the period 06.07.2021 and 10.07.2021 whereas intimation of the alleged theft was sent to the Senior Superintendent of Police on 02.08.2021 and the application under Section 15(3) Cr.P.C. has been filed on 13.08.2021 and there is no explanation for this delay; that the FIR does not mention the name of the applicant; that the applicant has been implicated in the present case while he was already in custody in connection with another case and nothing has been recovered from the applicant and two of the other co-accused persons have been granted bail, I am of the view that the applicant is entitled to be released on bail pending conclusion of the trial. The bail application is accordingly allowed.

9.Let the applicant - **Jamiruddin Sheikh** be released on bail in Case Crime No. 650 of 2021, under Sections 379, 34 I.P.C., P.S. Tajganj, District Agra, on his furnishing a personal bond and two reliable sureties each of the like amount to the satisfaction of the court concerned subject to following conditions:-

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

(ii) The applicant will not influence any witness.

(iii) The applicant will appear before the trial court on the date fixed, unless personal presence is exempted.

(iv) The applicant shall not directly or indirectly make 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 to any police officer or tamper with the evidence.

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

Order Date :- 3.12.2022

Ashish Pd.