

Court No. - 11

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 1499 of 2022

Applicant :- Sheebu Chowdhary Alias Mohd. Sheebu

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

Counsel for Applicant :- Ashish Kumar,Raj Kumar Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Rajesh Singh Chauhan,J.

Heard Sri Ashish Kumar, learned counsel for the applicant and learned A.G.A.

Vide order dated 17.2.2022, this Court directed the State to file counter affidavit but no counter affidavit has been filed, however, as per learned AGA, a letter has been preferred from the office of Government Advocate for doing needful to file counter affidavit but no parawise comments have yet been received, therefore, counter affidavit could not be filed. He has submitted that if some more time is given, the counter affidavit may be filed.

As per learned counsel for the applicant, the present applicant is in jail since 22.08.2021 in Case Crime No.0309 of 2021, under Sections 153A, 505 (2), 294, 124A, 295A, 298, 354 (Ka) IPC and Section 7 CLA Act and Section 67 I.T. Act, Police Station – Mahmudabad, District – Sitapur.

Learned counsel for the applicant has submitted that the present applicant though is the Activist but has got utmost faith and respect towards the country as well as towards other religions. In para-6 of the bail application, a clear recital has been given that the accused-applicant has never posted such slanderous remark on his Facebook I.D. or Wall for which he is being prosecuted. Further, the applicant's Facebook I.D. was hacked by some unknown Facebook users having oblique motive to falsely rope in the case. However, as soon as the applicant came to know about such Facebook content, he at once removed such content from his Facebook I.D. He has further submitted that charge sheet has been filed and except Section 124-A IPC, all other sections are having punishment less than three years or fine or both and are triable by the Magistrate.

So far as the ingredients of Section 124-A IPC are concerned, such content, if it is considered on its face value, may not be treated as sedition in the light of ingredients of Section 124-A

IPC. Even Section 124-A IPC provides a punishment not only for imprisonment of life but also to the extent of three years with fine or both, therefore, in view of the above, considering the content of Facebook I.D., which has been enclosed with the bail application and considering the period of incarceration in jail i.e. since 22.8.2021, the present applicant may be enlarged on bail as the charge sheet has already been filed and there is no apprehension of absconding or fleeing away or tampering the witnesses or evidence. Further, attention has been drawn towards Annexure No.2 to the bail application, which is a photograph showing that the present applicant is carrying an Indian Flag in his hand and learned counsel for the applicant has described this photograph to say that the present applicant was showing respect to the Flag of the country. On behalf of the present applicant, learned counsel for the applicant has submitted that for the applicant, nothing is above the country, be it religion or anything. As per him, country is first and anything is subsequent. Sri Ashish Kumar has further submitted that if the present applicant is found in any incident showing disrespect to the law of the land or disrespect of the country or is found to involve criticizing other religion, his bail application may be rejected at that point of time at once. Therefore, he has submitted that if the present applicant is released on bail, he shall abide by all the terms and conditions of the bail order and shall not misuse the liberty of bail and shall cooperate with the trial proceedings.

Learned AGA has opposed the prayer for bail by submitting that for the offence committed by the present applicant, he is not entitled for bail. On being confronted on the aforesaid point to ask as to whether the aforesaid offence stands proved against the present applicant, learned AGA has submitted that the offence in question may only be proved after conclusion of trial. Admittedly, the trial is under progress and has yet not been concluded.

Having heard learned counsel for the parties and considering the undertaking so given by the learned counsel for the applicant on behalf of the applicant, sections under which the applicant has been charge-sheeted and the charge sheet has already been filed, the present applicant may be enlarged on bail. The applicant shall furnish a personal bond of Rs.one lakh and two sureties of Rs.50 thousand each to the satisfaction of the court concerned. Such sureties shall duly be verified before issuing the release order. In any case, if the present applicant flouts the aforesaid undertaking being given on behalf of him by his counsel, liberty is given to the State to file application for cancellation of his bail with corroborative material and such application for cancellation of bail shall be considered at the

earliest.

Accordingly, let applicant- Sheebu Chowdhary alias Mohd. Sheebu be released on bail in the aforesaid case crime number on his furnishing a personal bond and two sureties of the aforesaid amount with the following conditions besides the conditions, as aforesaid:-

(i) 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. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(ii) 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.

(iii) 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, then, the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

(iv) 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 absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

[Rajesh Singh Chauhan,J.]

Order Date :- 2.3.2022

RBS/-