

Court No. - 64

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 50628 of 2023

Applicant :- Nitin Srivastava

Opposite Party :- State of U.P.

Counsel for Applicant :- Rajiv Lochan Shukla, Siddharth Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

1. Heard Mr. Siddharth Shukla alongwith Mr. Rajiv Lochan Shukla, the learned counsel for applicant and the learned A.G.A. for State
2. Perused the record.
3. This application for bail has been filed by applicant-Nitin Srivastava seeking his enlargement on bail in Case Crime No. 730 of 2023 under Sections 7, 13 (1) (b) read with Section 13 (2) of Prevention of Corruption Act, 1988, Police Station-Cantt. District-Gorakhpur, during the pendency of trial.
4. Record shows that in respect of an incident, which is alleged to have occurred on 16.10.2023, a prompt F.I.R. dated 16.10.2023, was lodged by first informant- Uday Pratap Singh (In-charge Inspector) and was registered as Case Crime No. 730 of 2023 under Sections 7, 13 (1) (b) and Section 13 (2) of Prevention of Corruption Act, 1988, Police Station-Cantt. District-Gorakhpur. In the aforesaid F. I.R., applicant- Nitin Srivastava has been nominated as solitary named accused.
5. The prosecution story as is discernible from the F.I.R. is to the effect that complainant Narendra Kumar Mishra applied for grant

of No Objection Certificate qua his land as a public highways was proposed to be constructed appurtenant to the land of the complainant. At that point of time, applicant was working as a junior clerk. He is alleged to have made a demand of Rs.5000/- for issuing the said certificate. In view of above, the complainant made a complaint. Accordingly, a police trap was laid on 16.10.2023 and applicant was caught red handed with cash worth Rs. 5000/- (bribe money) in the denomination of Rs.500 currency notes. The result of the chemical test conducted qua the recovery made from the person of applicant is also against the applicant.

6. After aforementioned F.I.R. was lodged, Investigating Officer proceeded with statutory investigation of aforementioned case crime number in terms of Chapter XII Cr.P.C. He examined complainant and other witnesses under Section 161 Cr.P.C. On the basis of above and other material collected by him during course of investigation, he came to the conclusion that offence alleged against applicant is fully established. The Investigating Officer thus submitted the police report in terms of Section 173 (2) Cr.P.C i.e. charge sheet dated 13.12.2023, whereby applicant has been charge-sheeted under Section under Sections 7, 13 (1) (b) read with Section 13 (2) of Prevention of Corruption Act, 1988.

7. Learned counsel for applicant contends that though the applicant is a named and charge sheeted accused, the recovery of Rs.5,000/- (bribe money) has been made from the person of applicant and the result of chemical test qua the recovery made from from the person of applicant is also against applicant, yet he is liable to be enlarged on bail. Applicant is innocent. He has been falsely implicated in aforementioned case crime number. With reference to paragraph 21 of the affidavit filed in support of present application for bail, the learned counsel for applicant contends that it is true that

applicant is working as a junior clerk at Tehsil, Gorakhpur, however, he is not the competent authority to grant such certificate. The No Objection Certificate demanded by the complainant is to be issued by Tehsildar concerned. On the above premise, it thus urged by the learned counsel for applicant that prima facie, it cannot be said that there is any basis for the demand alleged to have been made by applicant. Once there is no basis of demand alleged to have been made by applicant therefore recovery of bribe money recovered from the applicant is of no consequence, as mere recovery of money does not constitute an offence under the Prevention of Corruption Act. It is thus urged that the ratio laid down by the Constitution Bench of Supreme Court in **Neeraj Dutta Vs. State (NCT of Delhi) 2022 Online SC 1724** is squarely attracted in favour of applicant. As such, applicant is liable to be enlarged on bail.

8. Even otherwise, applicant is a man of clean antecedents having no criminal history to his credit except the present one. Applicant is in jail since 17.10.2023. As such, he has undergone almost nine and a half months of incarceration. Police report in terms of Section 173 (2) Cr.P.C. has already been submitted against applicant, therefore, the entire evidence sought to be relied upon by the prosecution against applicant stands crystalized. However, upto this stage, no such incriminating circumstance has emerged on record necessitating the custodial arrest of applicant during the pendency of trial. Since the applicant is a government servant, therefore, in case applicant is enlarged on bail, there are no chances of his fleeing away from the trial. On the above premise, the learned counsel for applicant contends that applicant is liable to be enlarged on bail. In case the applicant is enlarged on bail, he shall not misuse the liberty of bail and shall co-operate with the

trial.

9. Per contra, the learned A.G.A. for State has vehemently opposed the prayer for bail. He submits that since applicant is a named as well as charge sheeted accused, recovery of Rs. 5,000/- (bribe money) has been made from the person of applicant and the result of the chemical test qua the recovery made from the person of applicant is also against applicant. On the above premise, the learned A.G.A. submits that offence complained of against applicant is not only illegal but also immoral. Thus no indulgence be shown by this court in favour of applicant. However, he could not dislodge the factual and legal submissions particularly the submissions urged by the learned counsel for applicant with reference to paragraph 21 of the affidavit filed in support of present application for bail.

10. Having heard the learned counsel for applicant, the learned A.G.A. for State, upon perusal of material brought on record, evidence, nature and gravity of offence as well as complicity of applicant, accusation made coupled with the fact that though the applicant is a named and charge sheeted accused, the varied submissions urged by the learned counsel for applicant in support of present application for bail, as noted above, could not be dislodged by the learned A.G.A., particularly the averments made in paragraph 21 of the affidavit filed in support of present application for bail remain uncontroverted, the recovery of Rs.5,000/- (bribe money) has also been made from the person of applicant, the result of the chemical test qua the recovery made from the person of applicant is also against the applicant, yet this court finds that prima facie it cannot be said that there is any basis for the demand alleged to have been made by applicant, in view of above, the recovery of money from the person of applicant is of no

consequence as mere recovery of money does not constitute an offence under the Prevention of Corruption Act, in view of above the ratio laid down by the constitution Bench of Apex Court in **Neeraj Dutta (Supra)** is squarely attracted in favour of applicant, the police report in terms of Section 173 (2) Cr.P.C. has already been submitted against applicant, as such, the entire evidence sought to be relied upon by the prosecution against applicant stands crystalized, yet in spite of above the learned AG.A. could not point out any such incriminating circumstance from the record necessitating the custodial arrest of applicant during the pendency of trial, the judgement of Apex Court in **Sumit Subhashchandra Gangwal Vs. State of Maharashtra, 2023 LiveLaw (SC) 373** (Paragraph 5), the clean antecedents of applicant, the period of incarceration undergone, as applicant is a government servant, in case applicant is enlarged on bail, there are no chances of his fleeing away from the trial, therefore, irrespective of the objections raised by the learned A.G.A. in opposition to the present application for bail, but without making any comments on the merits of the case, applicant has made out a case for bail.

11. Accordingly, present application for bail is **allowed**.

12.. Let the applicant-**Nitin Srivastava** involved in aforesaid case crime number 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 which are being imposed in the interest of justice:-

(i) Applicant will not tamper with prosecution evidence.

(ii) Applicant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) Applicant will not indulge in any unlawful activities.

(iv) Applicant will not misuse the liberty of bail in any manner whatsoever.

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

Order Date :- 2.8.2024

YK