

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 34168 of 2024

Applicant :- Mohammad Azam

Opposite Party :- State of U.P.

Counsel for Applicant :- Mohammad Waseem, S.M. Faraz I. Kazmi, Sudhir Kumar Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Ashutosh Srivastava, J.

Counter affidavit filed by learned AGA is taken on record.

Learned counsel for the applicant does not wish to file rejoinder affidavit to the counter affidavit filed by the learned AGA.

With the consent of the parties, the bail application is being heard and decided finally today itself.

Heard learned counsel for the applicant, learned AGA for the State-respondents and perused the record.

This bail application under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 has been moved on behalf of accused-applicant, Mohammad Azam, seeking enlargement on bail in Case Crime No. 463 of 2024, under Sections 298, 299, 302, 109 (1) and 61 (2) of the Bharatiya Nyaya Sanhita, 2023, Police Station Izzatnagar, District Bareilly.

Learned counsel for the applicant argued that the accused-applicant is innocent. He has been falsely implicated in this very case crime number and is languishing in jail since 22.7.2024. He has no criminal antecedent and there is no likelihood of his fleeing from course of justice or tampering with evidence in case of release on bail. Learned counsel for the applicant submits that applicant was not present on the spot. His name surfaced on record on the basis of confessional statement made by co-accused Akram. Learned counsel for the applicant submits that it is an admitted case of the prosecution that accused was not present on the spot. After almost 15 days of lodging of the FIR, a disclosure has been made by the accused Akram and on the basis of which, applicant was put behind the bar. No money or alleged knife was recovered

from the possession or pointing out of the applicant. Learned counsel for the applicant submits that applicant was not involved in destruction of idol of Lord Shiva. Learned counsel for the applicant submits that confessional statement of co-accused Akram is hit by Section 162 Cr.P.C. and is not admissible under Section 27 of the Indian Evidence Act. Hence, bail has been prayed for.

Learned AGA has vehemently opposed, but could not dispute the fact that applicant has no criminal antecedents. Learned AGA contends that though applicant was not present on the spot, but in the confessional statement of co-accused Akram role of conspiracy has been assigned against the applicant and religious sentiments has been flared up by the applicant.

Having heard and gone through the materials placed on record, it transpires that applicant was not present at the spot and his name surfaced on record on the basis of confessional statement made by co-accused Akram. No recovery whatsoever has been made from the possession or pointing out of the applicant. The trial has not started yet and conclusion of trial may take considerable time.

Considering all those facts and circumstances, the nature of accusations, severity of the punishment in the case of conviction and nature of supporting evidence, reasonable apprehension of tampering with the witness and prima facie case, but without commenting on merit of case, a case for bail is made out.

Accordingly, the bail application is **allowed**.

Let the accused-applicant, **Mohammad Azam**, involved in above mentioned case crime number be released on bail, on his executing a personal bond and two reliable sureties each, in the like amount to the satisfaction of the court concerned, subject to the following conditions:

1. The applicant will not tamper with the evidence.
2. The applicant will not indulge in any criminal activity.
3. The applicant will not pressurize/intimidate the prosecution witnesses and co-operate in the trial.
4. The applicant will appear regularly on each and every date fixed by the trial court, unless his personal appearance is exempted through counsel by the court concerned.

In the event of breach of any of the aforesaid conditions, the court below will be at liberty to proceed to cancel his bail.

Order Date :- 16.10.2024
Ravi Prakash

(Ashutosh Srivastava, J.)