

## **In Chamber**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 52531 of 2019

**Applicant :-** Ankit Tiwari

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Jagadish Prasad Yadav, Shailesh Upadhyay

**Counsel for Opposite Party :-** G.A.

## **Hon'ble Rahul Chaturvedi, J.**

This bail application has been listed before me pursuant to the direction of Hon'ble the Chief Justice dated 04.04.2020 for consideration, therefore, same is being decided in Chamber under the extraordinary conditions prevailing now a days.

Short submission dated 21st April, 2020 as well as written objection filed by learned A.G.A. are taken on record.

I have perused the bail application filed on behalf of Ankit Tiwari, who is languishing in jail since 26.9.2019 in connection with Case Crime No.1253 of 2019, u/s 420 I.P.C. and Section-66 of I.T. Act, P.S.-Surajpur, District-Gautam Budh Nagar.

The F.I.R. was registered by one Surjeet on 27.8.2019 for the alleged incident said to have taken place at unknown time and unknown place against unknown person. The allegation made in that F.I.R. is that some unknown person has created forged Facebook I.D. in the name of Abhinav Vishwakarma (IPS) and has swindled a sum of Rs.52,000/- on the pretext that this amount would be utilized for the treatment of a cancer patient and thus aforesaid amount was transferred in the Paytm Account No.916391330466.

During the course of investigation the police has recorded statement of the informant u/s 161 Cr.P.C. in which he alleged that the said forged facebook I.D. belongs to the present applicant Ankit Tiwari and the total amount was transferred in the Paytm account of one Shiva. The police after investigation has submitted a report u/s 173(2) Cr.P.C. and there is nothing left to be investigated. There are feeble chances of any tampering with the evidence or extending threats to the witnesses. The applicant is languishing in jail since 26.9.2019 having no criminal antecedents.

Keeping in view the nature of the offence, evidence on record regarding complicity of the accused, larger mandate of the Article 21 of the Constitution of India and the dictum of Apex Court in the case of *Dataram Singh Vs. State of U.P. and*

***another reported in (2018)3 SCC 22*** and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.

Let the applicant, Ankit Tiwari, who is involved in Case Crime No.1253 of 2019, u/s 420 I.P.C. and Section-66 of I.T. Act, P.S.-Surajpur, District-Gautam Budh Nagar, 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 subject to following conditions. Further, before issuing the release order, the sureties be verified.

**(i) THE APPLICANT SHALL FILE AN UNDERTAKING TO THE EFFECT THAT HE SHALL NOT SEEK ANY ADJOURNMENT ON THE DATE 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 IPC.**

**(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., MAY BE ISSUED AND IF 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 IPC.**

**(iv) THE APPLICANT SHALL REMAIN PRESENT, IN PERSON, BEFORE THE TRIAL COURT ON DATES FIXED FOR (1) OPENING OF THE CASE, (2) FRAMING OF CHARGE AND (3) 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.

**(v) THE TRIAL COURT MAY MAKE ALL POSSIBLE EFFORTS/ENDEAVOUR AND TRY TO CONCLUDE THE TRIAL WITHIN A PERIOD OF ONE YEAR AFTER THE RELEASE OF THE APPLICANT.**

In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

Since the bail application has been decided under extra-ordinary circumstances, thus in the interest of justice following additional conditions are being imposed just to facilitate the applicant to be released on bail forthwith. Needless to mention that these additional conditions are imposed to cope with emergent condition:-

- 1. The applicant shall be enlarged on bail on execution of personal bond without sureties till normal functioning of the courts is restored. The accused will furnish sureties to the satisfaction of the court below within a month after normal functioning of the courts are restored.***
- 2. The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad.***
- 3. The computer generated copy of such order shall be self attested by the counsel of the party concerned.***
- 4. The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.***

**Order Date :- 30.4.2020**

**M. Kumar**