

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 50957 of 2021

**Applicant :-** Zakir

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

**Counsel for Applicant :-** Anil Kumar Tripathi, Animesh Chatterjee, Rajesh Mishra

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

**Hon'ble Vikas Budhwar, J.**

Heard Sri Rajesh Mishra, learned counsel for the applicant, and Sri Shrawan Kumar Ojha, the learned AGA for the State.

This bail application purported to be under Section 439 of the Cr.P.C. has been moved on behalf of applicant- **Zakir** for enlarging him on bail in Case Crime No.250 of 2021 under Sections 342, 394, 411, 120B I.P.C, registered at Police Station- Saroorpur, District- Meerut.

The bail application so preferred by the applicant has been rejected by the court below on 16.9.2021.

Learned counsel for the applicant has argued that an FIR has been lodged before the aforementioned police station being FIR No.0250 on 1.8.2021 at 01:48 hours under Sections 342 and 394 IPC relating to the commission of offence on 30.7.2021 against the unknown persons with an allegation that a commercial vehicle loaded with 890 sacks of cement was sought to be looted and thereafter the recovery was sought to be made, whereby in possession of the applicant, a countrymade pistol and incriminating articles were also found including the cement sacks. Learned counsel for the applicant has argued that he has not been named in the FIR and he has been falsely implicated in the case in question. The recovery is planted one and there are no independent witnesses, who could see the recovery of incriminating articles including the cement sacks. Learned counsel for the applicant has further drawn the attention of this Court towards supplementary affidavit so as to contend that a case being Case Crime no.235 of 2021, under Section 3/25 of the Arms Act has also been lodged, which is an off-shoot of the present case and thus he does not possess any criminal history, prior to lodging of the FIR. Learned counsel for the applicant has further argued that the applicant is languishing in jail since 2.8.2021. If the applicant is released on bail, he will not misuse the liberty of bail, he be enlarged on bail.

Countering the said submission, the learned AGA has opposed

the bail while arguing that the applicant has committed the offence, merely the fact that his name does not find place in the FIR will not be a ground for enlarging him on bail. However, he could not dispute the fact that the applicant has explained the criminal history and is languishing in jail since 2.8.2021.

Considering the submissions so advanced by the learned counsel for the parties on the question of bail, this Court *prima facie* finds that this is a fit case for grant of bail, as the applicant was not named in the FIR, the criminal history has been properly explained and is languishing in jail since 2.8.2021, as also looking into the nature of acquisition, the evidence collected by the I.O, in support of the charge, gravity of offence, nature and severity of the punishment in the case of conviction, complicity of accused and all attending circumstances.

Courts have taken notice of the overcrowding of jails during the current pandemic situation (***Ref.: Suo Motu Writ Petition (c) No. 1/2020, Contagion of COVID 19 Virus in prisons before the Supreme Court of India***). These circumstances shall also be factored in while considering bail applications on behalf of accused persons.

In the light of the aforementioned discussion and without making any observations on the merits of the case, the bail application is allowed.

Let the applicant- **Zakir** involved in aforesaid crime 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 that :-

- i) The applicant shall not tamper with the prosecution evidence by intimidating/ pressurizing the witnesses, during the investigation or trial.
- (ii) The applicant shall cooperate in the trial sincerely without seeking any adjournment.
- (iii) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.
- (iv) The applicant shall not directly or indirectly make any 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.

(v) Identity, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

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

Any observations made in granting bail to the applicant shall not in any way affect the learned Trial Judge in forming his independent opinion based on the testimony of the witnesses.

**Order Date :- 31.3.2022**

N.S.Rathour