

RESERVED on 18.8.2022

Delivered on 22.08.2022

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 54178 of 2021

Applicant :- Deepak @ Deep Prakash @ Deepu

Opposite Party :- State Of U.P., Through Secretary Home Govt. Of U.P.

Counsel for Applicant :- Prashant Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Siddharth,J.

Heard Sri Prashant Kumar Singh, learned counsel for the applicant and Shri Rajesh Mishra, learned A.G.A for the State.

The instant bail application has been filed on behalf of the applicant, Deepak @ Deep Prakash @ Deepu, with a prayer to release him on bail in Case Crime No. 323 of 2020, under Sections 419,420 IPC Police Station Chaubeypur, District- Kanpur Nagar, during pendency of trial.

There is allegation of cheating against the applicant and other co-accused persons in the First Information Report. Applicant has been implicated on the allegation that he was found using mobile number 9794772642, which was registered in the name of Daya Shankar Agnihotri. There is allegation against him that he was using mobile phone with intention to commit crime.

Learned counsel for the applicant has submitted that applicant has been falsely implicated in this case since he is brother of the criminal Late Vikas Dubey. He had criminal history of nine cases registered against him from 1998 to 2004 which has been explained in paragraph-19 of the affidavit filed in support of the bail application. He has been acquitted in six cases, convicted in one case and two cases are under the Gangsters Act. After Late Vikas Dubey

was arrested in July 2021 he has been falsely implicated by the police in four cases after gap of 16 years. There is no allegation against the applicant that applicant has used mobile phone number in commission of any crime nor any complaint was lodged by real owner of the mobile phone , Daya Shankar Agnihotri against him. The offence is triable by the Magistrate. The applicant is in jail since 12.1.2021. There is no possibility of early conclusion of trial.

Shri Rajesh Mishra, learned A.G.A. appearing on behalf of the State has filed counter affidavit and has vehemently opposed the bail application. He has submitted that the aforesaid mobile number belong to the servant of late Vikas Dubey. It was being misused by the applicant in aiding escape of Vikas Dubey. The First Information Report was lodged on the basis of detailed report submitted by the Special Investigating Team based on the statement of Daya Shankar Agnihotri. The rules of Telecom Regulatory Authority do not permit the change of subscriber. He has submitted that applicant is not entitled to be enlarged on bail. The court below has taken into account the conduct of the applicant and rightly rejected his bail application,

Keeping in view the nature of the offence, argument advanced on behalf of the parties, 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 recent judgement dated 11.7.2022 of the Apex Court**

in the case of Satendra Kumar Antil Vs. C.B.I., passed in S.L.P. (CRL.) No. 5191 of 2021 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 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.

1. The applicant shall not tamper with the prosecution evidence by intimidating/ pressurizing the witnesses, during the investigation or trial.
2. The applicant shall cooperate in the trial sincerely without seeking any adjournment.
3. The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.
4. That 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 or to any police officer;
5. The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence and 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 to ensure presence of the applicant.

6. 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 default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of his bail and proceed against him in accordance with law.

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

Order Date :- 22.08.2022

Atul kr. sri.