Court No. - 88

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 23297 of 2023

Applicant :- Kundan Yadav
Opposite Party :- State of U.P.
Counsel for Applicant :- Vishwa Nath Pandey
Counsel for Opposite Party :- G.A.

Hon'ble Vikram D. Chauhan,J.

1. Learned A.G.A. for the State submits that instructions have been received and he has no objection in case the bail application is heard on merits.

2. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.

3. It is submitted by learned counsel for the applicant that the applicant has been falsely implicated. There is no independent witness of the recovery. There is no allegation of slaughter against the applicant. The procedure for seizure as provided under the Criminal Procedure Code has not been followed.

4. It is further submitted that the applicant was not apprehended from the spot. Six cows have been recovered from one vehicle. There is no evidence linking the applicant with the alleged crime. The co-accused, Golu @ Amarjeet, has already been enlarged on bail by order dated 19.5.2023 passed by this Court in Criminal Misc. Bail Application No. 18834 of 2023 and the co-accused, Guddu Yadav, has already been enlarged on bail by the co-ordinate Bench of this Court by order dated 17.5.2023 passed in Criminal Misc. Bail Application No. 19455 of 2023. The applicant has no criminal history. Applicant is languishing in jail since 6.3.2023 and in case he is released on bail, he will not misuse the liberty of bail and will cooperate in the trial.

5. Learned A.G.A. for the State opposed the prayer for bail but does not dispute factual matrix of the case. It is submitted that U.P. Act No. 1 of 1956 is enacted to prohibit and prevent the slaughter of cow and its progeny in Uttar Pradesh. The applicant has been found to have committed an offence under the abovementioned act.

6. Learned AGA for the State has not shown that the applicant has been previously convicted under the provisions of U.P. Act No. 1 of 1956.

7. No material has been shown by learned AGA for the State to demonstrate that the applicant has slaughtered or cause to be slaughtered or offer or cause to be offered for slaughter a cow, bull or bullock in any place in Uttar Pradesh. The alleged act cannot be stated to come within the ambit of section 2(d) of U.P. Act No. 1 of 1956. There is no independent witness of the recovery. Mere possession of live cow/bullock by itself cannot amount to committing, abetting, or attempting an offence under the Act No. 1 of 1956. The maximum sentence imposed by section 3 read with section 8 of U.P. Act No. 1 of 1956 is ten years.

8. Mere transportation of the cow from one place to another within the Uttar Pradesh would not come within the ambit of Section 5 of U.P. Act No.1 of 1956. Mere transport of cow within Uttar Pradesh would not amount to committing, abetting or attempting to commit an offence under U.P. Act No 1 of 1956. There is no independent witness of the said recovery. No fact, circumstance or material has been shown by learned AGA for the State to demonstrate that transport or offer for transport or cause to be transported of any cow, or bull or bullock, is from any place within the State to any place outside the State. The maximum sentence imposed by section 5A read with section 8 of U.P. Act No. 1 of 1956 is ten years.

9. No material and circumstance has been shown by learned AGA for the State to demonstrate that any physical injury to any cow or its progeny so as to endanger the life thereof such as to mutilate its body or to transport it in any situation whereby endangering the life thereof or with the intention of endangering the life thereof does not provide with food or water, by the applicant. There is no witness to substantiate that the applicant has caused any physical injury to any cow or its progeny so as to endanger the life. No report of competent authority has been placed to show any physical injury was caused on the body of cow or bullock. There is no independent witness of the alleged recovery. The maximum sentence imposed by section 5-B of U.P. Act No. 1 of 1956 is seven years.

10. In view of the abovementioned, prima facie, the applicant is not guilty under the provisions of U.P. Act No. 1 of 1956.

11. Learned AGA for the State has not brought any fact or

circumstances to indicate criminal history or antecedents of the applicant which would disentitle the applicant for Bail.

12. It is not the case of the State that the applicant has not cooperated in the investigation or proceedings before the trial court.

13. The principle that Bail is a rule and Jail is an exception has been well recognised by Apex Court more specifically on the touch stone of Article 21 of the Constitution. The said principle has been reiterated by the Apex Court in **Satyendra Kumar Antil Vs. Central Bureau of Investigation and another, 2022 (10) SCC 51**. Learned AGA for the State has not shown any exceptional circumstances which would warrant denial of bail to the applicant.

14. No material, facts or circumstances has been shown by learned AGA for the State that the accused may tamper with the evidence or witnesses or the accused is of such character that his mere presence at large would intimidate the witnesses or that accused will use his liberty to subvert justice or tamper with the evidence.

15. It is settled principle of law that the object of bail is to secure the attendance of the accused at the trial. No material particulars or circumstances suggestive of the applicant fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like have been shown by learned AGA for the State.

16. Learned AGA for the State has not shown any material or circumstances that the accused/applicant is not entitled to bail in larger interests of the public or State.

17. Considering the facts and circumstances of the case, nature of offence, evidence, complicity of the accused, submissions of learned counsel for the parties 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.

18. Let the applicant-**Kundan Yadav** involved in Case Crime No. 29 of 2023, under Sections 3/5A/5B/8 of U.P. Prevention Cow Slaughter Act, 1964 and Section 11 Prevention to Animal Cruelty Act, 1960, Police Station Pataherwa, District Kushi Nagar be released on bail on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to the following conditions:-

i. The applicant will not tamper with the evidence during the trial.

ii. The applicant will not pressurize/intimidate the prosecution witness.

iii. The applicant will appear before the trial court on the date fixed, unless personal presence is exempted and/or the applicant shall make himself available for interrogation by a police officer as and when required.

iv. The applicant shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.

v. 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 or tamper with the evidence.

vi. The applicant shall not leave India without the previous permission of the Court.

vii. In the event, the applicant changes residential address, the applicant shall inform the court concerned about new residential address in writing.

19. In case of breach of any of the above condition, the prosecution shall be at liberty to move bail cancellation application before this Court.

Order Date :- 24.5.2023
VMA