

Court No. - 87

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 709 of 2023

Applicant :- Irfan Solanki

Opposite Party :- State of U.P.

Counsel for Applicant :- Ram Lal Mishra, Gaurav Dixit

Counsel for Opposite Party :- G.A.

Hon'ble Dinesh Kumar Singh, J.

1. Counter Affidavit filed by Sri Devesh Nath Tiwari, learned A.G.A. on behalf of the State is taken on record.

2. Heard Sri Ram Lal Mishra, learned counsel for the accused applicant and Sri Devesh Nath Tiwari, learned A.G.A. for the State and perused the record.

3. The present bail application under Section 439 Cr.P.C. has been filed seeking bail in Case Crime No. 198 of 2022, under Sections 212, 419, 420, 467, 468, 471 and 120B I.P.C., Police Station Gwaltoli, District - Kanpur Nagar.

4. The accused applicant is sitting Member of Legislative Assembly, Sheeshamau. The F.I.R. in question came to be registered on a complaint of Sri Ashok Kumar Dubey, In charge Inspector, Police Station Jajmau Commissionerate, Kanpur Nagar. There is a case registered as F.I.R. No. 127 of 2022 under Sections 436, 504, 147, 327, 427, 386, 504, 120B I.P.C. against the present accused applicant and other co-accused. The complainant was the Investigation Officer of the said offence. The present accused applicant was also one of the accused in the said offence. The competent court had issued non bailable warrant against the accused applicant in the said case. To arrest the accused applicant in compliance of non bailable warrant, three police teams were

constituted. During investigation, it was found that the present accused applicant had fled away from Kanpur with aid and assistance of co-accused Noori Shaukat; Isharat (Mausa) of Asharaf Ali @ Shekhu Noori, the brother of the Noori Shaukat, Ammar Ilahi @ Ali, the driver of Noori Ali, Anwar Mansoori, the brother of the present accused applicant; and Akhtar Mansoori. It is further alleged that the accused applicant and other co-accused had manufactured documents such as Adhar Card to conceal the real identity of the accused applicant which was prepared with the assistance of co-accused Asharaf Ali. The accused applicant on the basis of the forged documents, in order to conceal his identity, took journey from Kanpur to Delhi and Delhi to Mumbai. The journey from Delhi to Mumbai was performed by air route. The CCTV footage of Delhi and Mumbai Airports were examined and it was found that the accused applicant had travelled from Delhi to Mumbai on the basis of the forged Adhar Card.

5. Sri Ram Lal Mishra, learned counsel for the accused applicant submits that the offence is basically related to the offence under Adhar Act, 2016. It is urged that under the Adhar Act, before filing a complaint there has to be authorization from the competent authority but in the present case no such sanction/permission was granted by the competent authority. He also submits that the maximum punishment under Section 37 of the Adhar Act, 2016 is of three years. He submits that no police report, no F.I.R. could have been registered for offence committed for offence under the Adhar Act without prior permission of the competent authority and therefore, the proceedings against the accused applicant which are essentially for violation of Adhar Act, are not liable to be continued. In view thereof, he submits that the accused applicant who is in jail since 02.12.2022, may be enlarged on bail.

6. On the other hand, Sri Devesh Nath Tiwari, learned A.G.A. submits that the accused applicant has a long criminal history of sixteen case and the detail of those criminal history is on record along with the Counter Affidavit filed by the State, which has been endorsed as Annexure C.A.I(9). He submits that the accused applicant might have committed an offence under Adhar Act but he has also committed offences under the Indian Penal Code, 1860, for which the F.I.R. was registered against him and other co-accused persons and charge sheet has also been filed. He, therefore, submits that for registering an F.I.R. in respect of offence committed under I.P.C., no permission or sanction is required from the competent authority as is required under the Adhar Act. It is, therefore, submitted that the In-charge Inspector was fully competent to make complaint regarding offence committed by the accused applicant and on the basis of the complaint, the F.I.R. can be registered. He further submits that the police has already investigated the offence and charge sheet has already been filed and the accused applicant may take this plea at an appropriate stage regarding prior permission for lodging a complaint against him in respect of the alleged offence of preparing the forged Adhar Card. He therefore, submits that looking at the long criminal history of the accused applicant, this cannot be a case where the accused applicant should be enlarged on bail inasmuch as preparing the forged identity card is serious issue and such issue has to be dealt with sternly as several terrorist activities/attacks take place by terrorists who sneak into the country by using forged and fabricated Adhar Card which is a very important document of identity of citizens of this country and forging the said identity by the accused applicant and taking to and fro travel from Delhi to Mumbai on the basis of such forged

identity card i.e. Adhar Card, is serious offence for which the F.I.R. was registered and charge sheet has been filed. He therefore, submits that looking at the gravity and nature of offence, evidence available against the accused applicant as well as the long history of criminal cases, this Court may not enlarge the accused applicant on bail.

7. I have considered the submissions of the learned counsel for the parties. This Court finds it strange that a Member of Legislative Assembly forges the national identity card i.e. Adhar Card and takes travel on the basis of the forged identity card. Whether the accused applicant has committed an offence under Adhar Act or not would be decided at the relevant stage of trial but this Court is of the view that the accused applicant has committed offence under I.P.C. for which no permission/sanction is required from the competent authority for lodging the F.I.R. and undertaking the investigation. In view thereof, I do not find any substance in the submission of the learned counsel for the accused applicant that the case essentially pertains to violation of Adhar Act.

8. In view thereof, I do not find that it is a case where the accused applicant can be enlarged on bail at this stage. Thus, the present application is hereby **rejected**.

Order Date :- 17.2.2023
Arun K. Singh