

COURT OF THE SESSIONS JUDGE, LUCKNOW.

PRESENT : MAHESH KUMAR KUSHWAHA, H.J.S.

BAIL APPLICATION (U/S 439 Cr.P.C.) NUMBER : 7240/2022.

C.N.R. NUMBER : UPLK01-012427-2022.

Krishna Yadav,
S/O Shiv Narayan Yadav,
R/O E-753, Sector-I,
L.D.A. Colony, Kanpur Road,
P.S. Ashiyana, District Lucknow.

.....Accused/Applicant.

Versus

State of Uttar Pradesh.

.....Opposite Party/Prosecution.

Case Crime Number: 325/2022.

Under Sections: 457, 380 and 411 of
the Indian Penal Code.

Police Station: Ashiyana,

District: Lucknow.

17.08.2022.

Instant application praying for bail, under Section 439 of the Criminal Procedure Code, supported with an affidavit of Ram Narayan S/O Shiv Bahadur Yadav, has been moved on behalf of accused/applicant **Krishna Yadav** S/O Shiv Narayan Yadav, detained in judicial custody in case crime number mentioned above.

It has been mentioned in memo of the application that this is the Ist Application praying for bail under Section 439 of the Criminal Procedure Code moved on behalf of accused/applicant.

According to prosecution version, first informant Afroz Khan R/O Hussainganj, Lucknow lodged an FIR with P.S. Ashiyana, Lucknow on 01.07.2022 at 18:16 hours stating that his shop is situated near Khajana Complex in which he carries on trade of *Paan-Masala*. Material worth Rs. 40,000/- was kept in his shop. Some unknown persons had committed theft in his said shop by breaking open the lock and took away material worth Rs. 40,000/- as well as 12-Volt battery. As he failed to trace his goods, he is lodging the FIR.

During investigation, on 01.07.2022 at 11:45 P.M., local Police arrested three suspects who were coming from the side of Saleh Nagar crossing. They disclosed their names as Raj Kashyap, Shani Sharma and Krishna Yadav. A heavy bag which was being carried by accused Raj Kashyap was searched by Police team from which three

white transparent *Dabbas* were recovered in which *Paan-Masala*, *Gutkha* and Tobacco were kept. On questioning they confessed that these goods were stolen by them in a *Pan-masala* shop near Khajana Market. They had sold some of the *Pan-Masala*, *Gutkha* and cigarette packets and used money on their own. The remaining goods were recovered by the Police from their possession.

Heard learned counsel for the accused/applicant as well as Shri Manoj Kumar Tripathi Advocate, learned D.G.C. (Criminal) for State of Uttar Pradesh.

At the outset, learned counsel for the accused/applicant submitted that case of accused/applicant stands at par with co-accused Raj Kashyap and Shani Sharma, shown to have been arrested alongwith accused/applicant, who has been granted bail vide Order(s) dated 18.07.2022 and 12.07.2022 passed in Bail Application (U/S 439 Cr.P.C.) Number(s) 6166/2022 and 6001/2022 respectively.

Referring the Prosecution case, learned counsel for the accused/applicant submitted that accused/applicant is innocent. He has not committed any offence. He has been falsely framed in the case. He holds no criminal history to his credit. He is languishing in jail since 02.07.2022. There is no independent witness, either of the alleged incident or of the recovery memo. Upon above submissions, bail has been prayed.

Learned D.G.C. (Criminal) for State of Uttar Pradesh has opposed the bail application stating that occurrence is stated to have occurred on 30.06.2022 and FIR was lodged on 01.07.2022 and on the same day in late night, part of the stolen substances *viz.* *Paan-Masala* and *Gutkha*, were recovered by the Police and one battery is also recovered from the joint possession of accused/applicant and co-accused persons. Accused/applicant is not entitled to bail.

Considering the rival submissions of learned counsels for the parties, nature of offence, nature of allegations, offence being triable by the Court of learned Magistrate and the fact that no public witness has been enjoined in alleged arrest and recovery despite there are persons shown on the spot in the recovery memo as well as the principle of parity, without expressing any definite opinion on the merits of the case, grounds for bail are found sufficient and application for bail is liable to be allowed.

ORDER

Bail application is **allowed**.

Let accused/applicant **Krishna Yadav** S/O Shiv Narayan Yadav be released on bail on his furnishing a personal bond of **Rs. 40,000/-** alongwith two sureties, each in the like amount, subject to the satisfaction of the learned Court concerned and upon giving an undertaking that he will cooperate in trial, shall not tamper with evidence, shall neither allure nor intimidate nor influence any witness(-es) and shall not seek any unnecessary adjournments and shall remain present, in person, before the Court concerned on the dates fixed for: **(i)**

opening of the case, *(ii)* framing of charge and, *(iii)* recording of statement under Section 313 of the Criminal Procedure Code.

Dated: 17.08.2022.

(Mahesh Kumar Kushwaha)
I/C Sessions Judge,
Lucknow.