

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 3882 of 2023

Applicant :- Vivek Singh Solanki

Opposite Party :- State of U.P.

Counsel for Applicant :- Mansoor Ahmad, Brij Raj Singh

Counsel for Opposite Party :- G.A., Sunil Vashisth

Hon'ble Samit Gopal, J.

1. List revised.

2. Heard Sri Brij Raj Singh, learned counsel for the applicant, Sri Sunil Vashisth, learned counsel for the first informant, Birendra Pratap Singh, learned counsel for the State and perused the material on record.

3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant-Vivek Singh Solanki, seeking enlargement on bail during trial in connection with Case Crime No.205 of 2022, under Section 302 IPC, registered at Police Station Phase-2 Noida, District Gautam Buddh Nagar.

4. The FIR of the matter was lodged on 14.5.2022 by Mukesh Tyagi @ Mukhia against unknown person alleging therein that on 14.5.2022 his son Abhay @ Ballu Tyagi went from the house for the market where three persons assaulted him with lathi-danda and stone due to which he received injuries. On information he and his wife reached the place of incident and took his son to hospital where he was declared dead. He did not see as to who had assaulted his son. The FIR be thus lodged.

5. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that the first informant is not an eye-witness of the incident. Subsequently the first informant disclosed the name of two persons namely Vishnu Pandey and Sonu Thakur as the alleged witnesses of the incident in his statement under Section 161 Cr.P.C. after which the statement of the said two witnesses were recorded who vaguely stated that Vivek a person amongst three was stated to run away by the two other persons by stating that the person he had assaulted has died. The same is not in any manner credible. The prosecution has shown the recovery of stone on the pointing out of the applicant. It is argued that there is no corroborating evidence regarding the use of the same. Subsequently the prosecution relies on the confessional of statement and recovery against the applicant. The recovery of stone is from an open place easily accessible to all. Co-accused Sunil Giri and Mohit have been granted bail by coordinate Benches of this Court vide orders dated 18.10.2022 and 14.12.2022 passed in Criminal Misc. Bail Application Nos.36999 of 2022 and 44770 of 2022, copy of the same is annexed as Annexure No.10 to the affidavit filed in support of bail application. It has also been pointed out that the applicant is not having any criminal history as stated in para 26 of the affidavit. The applicant is in jail since 24.5.2022.

6. Per contra learned counsel for the first informant and learned counsel for the State opposed the prayer for bail and argued that the implication of the applicant has surfaced in the matter during investigation. There is recovery of stone on the pointing out of the applicant as such the prayer for bail be rejected.

7. After hearing the counsel for the parties and perusing the record, it is evident that the applicant is not named in the FIR. There is an introduction of two persons as the alleged witness by the first informant in his statement under Section 161 Cr.P.C. The said two persons stated of one Vivek assaulting the deceased that appears to be vague. Co-accused persons have been granted bail.

8. Looking to the facts and circumstances of this case, the nature of evidence and also the absence of any convincing material to indicate the possibility of tampering with the evidence, this Court is of the view that the applicant may be enlarged on bail.

9. Since it is stated that the trial is at the verge of completion, the applicant shall not seek any unnecessary and undue adjournment in the matter and if the trial court comes to the conclusion that the applicant is resorting to delaying tactics, the trial court may take appropriate steps for cancellation of his bail at its own end.

10. Let the applicant-**Vivek Singh Solanki**, be released on bail in the aforesaid case crime number on furnishing a personal bond and two sureties (**one should be of his family member and the other should be of a local person**) each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice:-

i) The applicant will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

ii) The applicant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the date fixed for evidence when 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.

(iv) The applicant will not misuse the liberty of bail in any manner whatsoever. In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under section 82 Cr.P.C., may be issued and if applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under section 174-A I.P.C.

(v) The applicant shall remain present, in person, before the trial court on dates fixed for (1) opening of the case, (2) framing of charge and (3) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of

the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law and the trial court may proceed against him under Section 229-A IPC.

(vi) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicant.

11. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail and send the applicant to prison.

12. The bail application is **allowed**.

(Samit Gopal, J.)

Order Date :- 23.11.2023
Gaurav Kuls