Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14420 of 2022

Applicant :- Deepak Bhradwaj
Opposite Party :- State of U.P.
Counsel for Applicant :- Vinod Shankar Tripathi,Mazhar Ullah,Rajesh Kumar Srivastava,Vijai Shanker Tripathi
Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Rajesh Kumar Srivastava, learned counsel for the applicant and Sri Pradeep Kumar, learned A.G.A. for the State.

2. The instant bail application has been filed on behalf of the applicant seeking release on bail in Case Crime No. 0537 of 2021 under section 302 IPC, Police Station Bahedi, District Bareilly.

3. FIR of the present case was lodged against unknown persons and according to the FIR, when younger brother of the informant was coming towards his village then, at about 7:30 PM in the evening, some unknown person committed his murder by causing firearm injury. It is further mentioned in the FIR that at the spot, one motorcycle bearing registration number UP 1320205 and a country made pistol was lying.

4. Learned counsel for the applicant submits that nobody was named in the FIR and the name of the applicant was surfaced in the present matter through the statement of one alleged eye witness Amar Singh. He further submits although Amar Singh alleges himself to be an eye witness but from his statement, it appears that actually he did not witness the real incident as in his statement under section 161 Cr.P.C., although earlier he stated that he witnessed the applicant while he was opening fire upon the deceased but in the same statement, he further stated that when he returned to the village then he informed the villagers that some unknown persons opened fire upon the deceased and this fact clearly states that actually he was not the eye witness.

5. He further submits that even eye witness Amar Singh when appeared before the trial court as PW2, he did not support the prosecution case and has been declared hostile. He further submits

that in the charge sheet there are total 24 prosecution witnesses but till date only 9 witnesses could be examined and out of the said 9 witnesses, 5 witnesses were witnesses of fact and all of them have been declared hostile.

6. He further submits that applicant has no previous criminal history and he is in jail since 22.8.2021 i.e. for more than two years.

7. *Per Contra,* learned A.G.A. although opposed the prayer for bail but he could not dispute the arguments on facts advanced by learning counsel for the petitioner.

8. I have heard both sides and perused the record of the case.

9. However, from the record, it appears that nobody was named in the FIR and the name of the applicant was surfaced through the statement of the alleged eye witness Amar Singh who, in his statement, stated that he witnessed the applicant when he opened fire upon the deceased but in the same statement, he further stated that he only informed that some unknown persons caused fire arm injury to the deceased.

10. Further, during trial, the eye witness Amar Singh appeared before the trial court as PW2 and did not support the prosecution case and has been declared hostile. Further, in the charge sheet, it appears that there are total 24 prosecution witnesses and till date, only nine witnesses could be examined and out of the said nine witnesses, three were police personals and the remaining five prosecution witnesses were witnesses of fact and all of them have been declared hostile. Further, applicant is in jail since August, 2021 i.e. for more than two years and he has no previous criminal history.

11. Therefore, considering the facts and circumstances of the case as discussed above, I am of the view that applicant is entitled to be released on bail.

12. Accordingly, without expressing any opinion on the merits of the case, the instant application is **allowed**.

13. Let the applicant **Deepak Bhradwaj** be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicant shall appear before the trial court on the dates fixed, unless his personal presence is exempted.

(ii) The applicant shall not directly or indirectly, make 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 any police officer or tamper with the evidence.

(iii) The applicant shall not indulge in any criminal and anti-social activity.

14. In case of breach of any of the above conditions, the prosecution will be at liberty to move an application before this Court for cancellation of bail of the applicant.

15. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial.

Order Date :- 6.11.2023
Madhurima

Digitally signed by :-
MADHURIMA GARG
High Court of Judicature at Allahabad