

**Court No. - 74**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 10946 of 2023

**Applicant :-** Vinay @ Saurabha

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Ashok Kumar Singh Bais, Dhiraj Kumar Pandey, Gaurav Kakkar

**Counsel for Opposite Party :-** G.A., Dharmendra Kumar Mishra, Neeraj Kumar Yadav

**Hon'ble Vivek Varma, J.**

1. Second supplementary affidavit filed by learned counsel for applicant in Court today, which is taken on record.
2. Heard counsel for the applicant, Sri Prateek Tyagi, learned AGA for the State and Sri Dharmendra Kumar Mishra, learned counsel for informant.
3. The instant bail application, under Section 439 Cr.P.C., has been filed with a prayer to enlarge the applicant on bail in Case Crime No.424 of 2022, under Sections 147, 148, 149, 352, 307, 323, 324 I.P.C., Police Station- Nakur, District-Saharanpur during pendency of the trial.
4. Counsel for the applicant contends that the applicant has been falsely implicated in the instant case. Five persons including applicant are nominated in the first information report. As per the allegations in the first information report specific role of inflicting fire arm injury upon Mem Singh has been assigned to the applicant. As per the medical report, the injured sustained two injuries, the first injury was *gunshot penetrating chest and left upper limb* and the second injury was *11th rib comminuted fracture posteriorly with Traumatic Penumatoceles in left lung with Bullet ultimately lying in Inter muscular plane of left anterior chest wall*. The injuries were found grievous in nature. The doctor was not examined by the prosecution. There is no report that the said injuries were found dangerous to life. It is contended that the offence under Section 307 is not made out, it will not travel beyond Section 325 I.P.C. It is next contended that there is cross version of the incident. The first information report from the side of the applicant was lodged on 19.01.2023 registered as Case

Crime No.026 of 2023, under Sections 147, 148, 149, 307, 323, 395, 427, 452 and 506 I.P.C. Police Station Nakur, District Saharanpur. One person namely Aman Singh from the side of applicant has received gun shot injury on the left thigh. The aggressor is still to be ascertained. At this stage, there is no clarity with regard to role of the applicant. Learned counsel for applicant has also placed reliance upon the Judgment of the Apex Court in **Criminal Appeal No.524 of 2021 in the case of Parshuram Vs. State of M.P. decided on 03.11.2023**. It is next contended that the applicant is in jail since 09.11.2022 and the trial is moving at a snail's pace, and is not likely to conclude early. The charges have been framed on 26.05.2023. The applicant is not responsible for the delay in the trial. It is further contended that the inordinate delay in concluding the trial has led to virtually an indefinite imprisonment of the applicant without there being any credible evidence to implicate him in the offence and violates the rights of the applicant to a speedy trial. The applicant has no criminal history. In case he is enlarged on bail, he will not misuse the said liberty.

5. Learned A.G.A. and learned counsel for informant have opposed the prayer for bail but could not satisfactorily dispute the aforesaid facts from the record.

6. Having heard learned counsel for the parties and having perused the record this Court prima facie finds that there is no opinion of the doctor that the injuries sustained by the injured Mem Singh was found dangerous to life. There is cross version of the incident. From the side of the applicant Aman Singh has also received a gun shot injury. The injury sustained by Aman Singh has not been explained by the prosecution. The aggressor is still to be ascertained. At this stage, there is no clarity with regard to the role of the applicant. Further, the applicant has no criminal antecedents and has remained confined for more than one year and there is no hope of early conclusion of trial, more so when no reasonable apprehension has been brought to the fore by the State that the applicant, if enlarged on bail, would either tamper with the evidence or delay the trial or intimidate the witness, without commenting on merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

7. Let the applicant, **Vinay @ Saurabha** involved in the aforesaid case be released on bail on his furnishing a personal bond and two sureties each of the like amount to the satisfaction of court concerned on the following conditions that:

- i. the applicant shall not temper with the prosecution evidence;
- ii. the applicant shall not pressurize the prosecution witness; and,
- iii. the applicant shall appear on each and every date fixed by the trial court.

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

**Order Date :- 21.11.2023**

Imtiyaz