

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14142 of 2023

Applicant :- Shahid And Another

Opposite Party :- State Of U.P Through Secretary Home

Counsel for Applicant :- Abdul Majid, Mohammad Waseem

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma, J.

1. Heard counsel for the applicants and Sri V.P. Tripathi, learned AGA for the State-opposite party.

2. 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.964 of 2021, under Sections 147, 148, 149, 354-B, 323, 504, 506, 307, 452, 427 I.P.C., Police Station- Baherhi, District-Bareilly, during the pendency of trial.

3. Counsel for the applicants contends that the applicant no.2 has been falsely implicated in the present case. The applicant no.2 did not act inappropriately with the victim. Earlier, the mother of the applicant no.2 lodged a first informant report against the son of the victim on 02.03.2022 registered as Case Crime No.148 of 2022 under Sections 452, 376, 506 and 5/6 POCSO Act, Police Station Baherhi, District Bareilly. In the said case charge sheet has been submitted. In counter-blast to the said proceedings the instant prosecution has been instituted against the applicant no.2. Allegations of firing has been arraigned to co-accused Rohit. Further, vague and general role of assault has been leveled against the applicant no.2. It is next contended that the applicant no.1 (Shahid) has been granted bail by the co-ordinate Bench of this Court vide order dated 18.04.2023. The criminal history of applicant no.2 has been explained in paragraph 21 of the bail application and paragraph 15 of the rejoinder affidavit. It is next contended that the applicant is in jail since 09.01.2023 and the trial is moving at a snail's pace, and is not likely to conclude early. Till date, charges have not framed. In case he is enlarged on bail, he will not misuse the said liberty.

4. Learned A.G.A. has opposed the prayer for bail but could not satisfactorily dispute the aforesaid submissions from the record.

5. Having heard learned counsel for the parties and having perused the record this Court prima facie finds prior enmity exists between the parties. Allegation of firing has been assigned to co-accused Rohit. Vague and general role has been assigned to the applicant no.2. The co-accused, Shahid has been granted bail by this Court. Further, the applicant has remained confined for more than 10 months 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 no. 2 is entitled to be enlarged on bail.

6. Let the applicant- **Asif**, involved in aforesaid case be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to the conditions that he:

- (i) shall appear on the date fixed by the trial court;
- (ii) shall not tamper with the prosecution evidence;
- (iii) shall not pressurize the prosecution witnesses.

7. 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