

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 18115 of 2023

Applicant :- Avadhu Ram And Another

Opposite Party :- State of U.P.

Counsel for Applicant :- Shivam Mishra, Anchal Ojha, Rajesh Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma, J.

1. Heard learned counsel for the applicants and Sri Umesh Mishra, learned Brief Holder for the State-opposite party.
2. The instant bail application under Section 439 Cr.P.C. has been filed with the prayer to enlarge the applicants on bail in Case Crime No. 264 of 2016, under Sections 323, 504, 308 I.P.C., Police Station Mirzamurad, District Varanasi during the pendency of the trial.
3. Learned counsel for the applicants submits that the applicants have been falsely implicated in the instant case. As per the allegations in the first information report, co-accused Dinesh Kumar is alleged to have assaulted Jitendra, whereas the applicants are alleged to have caused injuries on Amir Ram. As per the medical report, injuries sustained by Amir Ram are simple in nature. Further, in the statement of injured Jitendra a general role of assault has been assigned to seven persons. Jitendra received three injuries, Injury Nos. 2 and 3 were found simple in nature, whereas Injury No. 1 was referred for X-ray examination. As per the X-ray report, fracture was seen on the *right high, mid parietal bone and right high frontal bone*. The applicants have not been nominated as the principal offender by the injured. In such circumstances, it is contended that there is no cogent evidence to link the applicants with the offence. The applicants are in jail since 10.03.2023 having no criminal history and if he is released on bail, he will not misuse the said liberty.
4. Learned Brief Holder 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 after perusal of the record, this Court prima facie finds that as per the medical report, injuries sustained by Amir Ram are simple in nature. In the statement of injured Jitendra a general role of assault has been assigned to seven persons. The applicants have not been nominated as the principal offender by the injured. At this stage there is no clarity with regard to role of the applicants. The applicants have no criminal antecedents. Moreover, the applicants have remained confined for more than eight and half months and after submission of the charge-sheet there is no hope of early conclusion of trial, and no reasonable apprehension has been brought to the fore by the State that the applicants, if enlarged on bail, would either tamper with the evidence or delay the trial or intimidate the witness, therefore, without commenting on the merits of the case, I am of the opinion that the applicants are entitled to be enlarged on bail.

6. Let the applicants- Avadhu Ram and Sudama, involved in the aforesaid case, be released on bail on their furnishing a personal bond and two sureties each in the like amount to the satisfaction of Court concerned subject to the conditions that they:

- (i) shall appear on the date fixed by the trial court;
- (ii) shall not tamper with the prosecution evidence; and,
- (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 :- 1.12.2023

SKT/-