

Neutral Citation No. - 2023:AHC:214457

Reserved On:- 13.10.2023

Delivered On:-07.11.2023

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 21743 of 2022

Applicant :- Ompal

Opposite Party :- State of U.P.

Counsel for Applicant :- Sujata Choudhary,Akash Tomar,Mohit Kumar Singh,Vivek Singh

Counsel for Opposite Party :- G.A.,Akash Tomar

Hon'ble Siddharth,J.

1. Heard Ms. Sujata Choudhary, learned counsel for the applicant; Sri Akash Tomar, learned counsel for informant and the learned A.G.A. for the State.
2. The instant bail application has been filed on behalf of the applicant, **Ompal**, with a prayer to release him on bail in **Case Crime No. 310 of 2021, under Section- 302, 120-B and 34 I.P.C., Police Station – Inchauli, District -Meerut.**
3. There is allegation in FIR that today i.e., 28.08.2021 at about 3:00 pm, the informant had gone to talk to his brother, Manoj Kumar, regarding sale of land in the village. Thereafter, the informant, his brother, Manoj Kumar and nephew, Happy, went to the house of co-villager, Harendra, at about 4:15 pm regarding the sale of land. After about 45 minutes, the informant sent his nephew, Happy, to bring papers of the land. At about 5:15 pm, co-villager, Ompal and sons of his daughter, Atul and Anuj, alongwith with their two friends came to the house of Harendra. Ompal, the applicant, entered inside the house of Harendra and stated that Manoj is sitting here and he should not be left alive today. Thereafter, they took out country-made pistols. While the informant was trying to talk with them, co-accused, Atul and his two unknown companions started firing on brother of informant, Manoj. They surrounded Manoj and continuously fired on him till he fell down. Co-accused, Atul and Anuj, fired on his face and head and uttered to applicant, Ompal, that today they have finished Manoj. At that time the nephew of the applicant, Prashant @ Happy and his mother, Asha Devi, came on the spot and they saw the entire incident and saved themselves by hiding behind a car. The applicant boarded the bike of co-accused, Anuj and went away. Thereafter, informant and others took the deceased to hospital, but he died in the way.

4. Learned counsel for applicant has submitted that during investigation the statements of eye witness, Harendra and independent witness, Sanoj Sharma, were recorded. Harendra assigned the role of firing to co-accused, Anuj and Atul. Eye witness, Sanoj Sharma, did not disclosed the name of the applicant. He is aged about 72 years and has been assigned the role of extortion only in the FIR. He is languishing in jail since 15.09.2021.

5. Learned counsel for informant has filed a short counter affidavit stating that the applicant and co-accused have eliminated the deceased on account of 22 years old enmity. He has submitted that it is a case of day light murder and prompt FIR was lodged. The incident was committed with common intention by all the accused persons. The main accused are the grandson of the applicant. They have link with Lawrence Bishnoi Gang and are involved in several cases of murders and attempt to murder. Grandsons of the applicant and one, Sani Kakraan, are the active members of Lawrence Bishnoi Gang. An administrative order has been passed for security of the informant which has been brought on record as Annexure-2 to the short counter-affidavit. He has further submitted that statements of three prosecution witnesses have been recorded. In case the applicant is released on bail, he will eliminate the first informant and his family members. It has been submitted that the applicant has criminal history of nine cases out of which five cases are under Section 302 IPC, two cases under Section 307 IPC, one case under Gunda Act and one case under Gangsters Act. He has submitted that six murders have taken place in 22 years old enmity between the parties.

6. Per contra learned A.G.A. has also opposed the prayer for bail of the applicant by contending that the innocence of the applicant cannot be adjudged at pre-trial stage, therefore, she does not deserves any indulgence. In case the applicant is released on bail, she will again indulge in similar activities and will misuse the liberty of bail.

7. After hearing the rival contentions this Court finds that there is no administrative order dated 25.03.2022 and 01.04.2023 brought on record by the counsel for informant alongwith his short counter affidavit regarding which averment has been made in paragraph 8 of the short counter affidavit. Further averments in the paragraph 13 of the short counter affidavit filed by informant that the applicant has criminal history of five cases under Section 302 IPC, two cases under Section 307 IPC, one case under Gunda Act and one case under Gangsters Act have not been substantiated by any material on record. In the supplementary-affidavit filed on behalf of applicant criminal history of two cases have been stated in paragraph 4 under Section 302 IPC. In one case it has been stated that the applicant has been wrongly implicated in the other cases. He has never been summoned for facing trial. In the short counter affidavit no details of other cases have been brought on record. However, in third

supplementary-affidavit filed by counsel for applicant criminal history of nine cases of the applicant has been brought on record which shows that applicant is involved in number of cases of murder and attempt to murder.

8. Keeping in view the motive of crime alleged and long criminal history of applicant, it is not a first case for grant of bail to applicant at this stage.

9. The bail application is accordingly, **rejected**.

10. The trial court is directed to conclude the trial against the applicant as expeditiously as possible, preferable within a period of six months from the date of production of certified copy of this order.

Order Date :-07.11.2023

Abhishek