

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 17291 of 2023

Applicant :- Manoj Sethiya

Opposite Party :- State of U.P.

Counsel for Applicant :- Prakash Chandra Srivastava, Mukesh Kumar, Rishabh Srivastava

Counsel for Opposite Party :- G.A., Tarun Jha

Hon'ble Sameer Jain, J.

1. Heard Sri Amit Kumar, Advocate, holding brief of Sri Rishabh Srivastava, learned counsel for the applicant, Sri Tarun Jha, learned counsel for informant as well as Sri Ravi Kant Kushwaha, learned AGA for the State.

2. The instant bail application has been filed on behalf of the applicant with a prayer to release him on bail in Case Crime No. 279 of 2021, under Sections 147, 148, 149, 307, 302, 504 IPC and Section 7 of Criminal Law Amendment Act, Police Station Mauranipur, District- Jhansi during pendency of trial.

3. Learned counsel for the applicant submits that this is the second bail application on behalf of the applicant and his first bail application has been dismissed by this Bench on 21.3.2022 and he is pressing the second instant bail application mainly on the ground that after rejection of first bail application of the applicant, co-accused Vinod Sethiya has been enlarged on bail by Coordinate Bench of this Court vide order dated 8.11.2023 passed in Criminal Misc. Bail Application No. 56311 of 2021.

4. He further submits that in view of the FIR of the present case, the case of applicant is at par with co-accused Vinod Sethiya and considering the statement of the injured recorded during investigation case of applicant is even on better footing than him

as according to the injured, applicant did not cause any injury either to the injured or the deceased, however, co-accused Vinod Sethiya caused injuries to the injured.

5. He has placed reliance of the judgment of the Apex Court in the case of **Satendra Kumar Antil Vs. C.B.I. & Another, (2022) 10 SCC 51** and submits that all the accused persons of similar case crime number should be treated equally and, therefore, in view of the fact that co-accused Vinod Sethiya has been released on bail, applicant should also be released on bail.

6. He further submits that however, applicant is having criminal history of three cases but his criminal history has been explained in paragraph no.26 onward to the affidavit filed in support of the instant bail application and all the three cases were of minor offences.

7. He further submits that in the charge sheet there are as many as 28 prosecution witnesses and till date 14 prosecution witnesses have already been examined including all the witnesses of facts and as all the witnesses of facts have already been examined by the trial court, therefore, there is no chance of tampering with the prosecution evidence, if applicant is released on bail.

8. He further submits that applicant is in jail in the present matter since 15.6.2021, i.e., for the last more than two years.

9. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that it is a case of indiscriminating firing in which one person lost his life and one sustained injuries and applicant along with other accused persons were named in the FIR and all the accused persons were assigned role of opening fire and after considering entire facts of the case first bail application of applicant was dismissed on merit

by this Bench.

10. However, both the learned counsels could not dispute the fact that after rejection of first bail application of the applicant, co-accused Vinod Sethiya has been released on bail by Coordinate Bench of this Court vide order dated 8.11.2023 passed in Criminal Misc.Bail Application No. 56311 of 2021 and in view of the FIR of the present case, the case of applicant is at par with him and even on better footing from the statement of the injured recorded under Section 161 Cr.P.C.

11. Learned AGA as well as learned counsel for the informant further could not dispute the fact that all the witnesses of facts have already examined by the trial court.

12. I have heard learned counsel for the parties and perused the record of the case.

13. However, this is the second bail application filed on behalf of the applicant and his first bail application has been dismissed on 21.3.2022 after considering the entire material available on record but it appears that after rejection of first bail application of applicant, bail application of co-accused Vinod Sethiya was allowed by Coordinate Bench of this Court vide order dated 8.11.2023 passed in Criminal Misc.Bail Application No. 56311 of 2021 and from the FIR of the present case, the case of applicant is at par with him and in the light of the statement of the injured recorded during investigation, the case of applicant is even on better footing than co-accused Vinod Sethiya as injured in his statement under Section 161 Cr.P.C. did not attribute any role of causing any injury to the applicant either to the deceased or to the injured himself.

14. The Apex Court in the case of ***Satender Kumar Antil Vs. CBI***

& another (2022) 10 SCC 51 in paragraph no. 98 has observed that-

"Uniformity and certainty in the decisions of the court are the foundations of judicial dispensation. Persons accused with same offence shall never be treated differently either by the same court or by the same or different courts. Such an action though by an exercise of discretion despite being a judicial one would be a grave affront to Articles 14 and 15 of the Constitution of India."

16. Therefore, in view of the observations made by the Apex Court in the above noted case, all the accused persons of the same case crime number should be treated equally.

17. Further, from the record it also reflects that in the charge sheet, there are as many as 28 prosecution witnesses and out of them 14 prosecution witness have already been examined by the trial court and it appears that all the witnesses of facts including the injured witnesses have already been examined by the trial court and, therefore, I find force in the arguments advanced by the learned counsel for the applicant that even if applicant is enlarged on bail then also there is no chance of tampering with the prosecution evidence.

18. Further, however, applicant is having criminal history of three other cases but his criminal history has been explained in the instant bail application and it appears that he was having criminal history of minor offences.

19. It is further reflected from the record that even Vinod Sethiya, who has been released on bail by Coordinate Bench of this Court after rejection of first bail application of the applicant, was also having criminal history of about 9 cases.

20. Further, applicant is in jail in the present matter since

15.6.2021, i.e., for last more than two years.

21. Therefore, considering the facts and circumstances of the case discussed above, in my view, applicant is entitled to be released on bail.

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

23. Let the applicant-**Manoj Sethiya** 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.

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

25. 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 :- 1.12.2023

SKM