

Court No. - 76

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 19671 of 2023

Applicant :- Harshit Chouhan

Opposite Party :- State of U.P.

Counsel for Applicant :- Pradeep Kumar Shukla, Bhaskar Bhadra, Sheshadri Trivedi

Counsel for Opposite Party :- G.A., Rajesh Kumar Mishra

Hon'ble Vikram D. Chauhan, J.

1. Learned A.G.A. for the State submits that instructions have been received and has no objection in case the bail application is heard on merits.

2. Heard Sri Satish Trivedi, learned Senior Advocate assisted by Sri Sheshadri Trivedi, learned counsel for the applicant, Sri Rajesh Kumar Mishra, learned counsel for the informant, learned A.G.A. for the State and perused the record.

3. It is submitted by learned counsel for the applicant that as per the allegations in the First Information Report it is alleged that on account of a previous dispute of court proceedings on 8.1.2023, at about 6.00 p.m., co-accused, Siddharth Dixit, the applicant and one relative of applicant along with two others have entered into the shop of the informant and have indiscriminately fired and as a result of the same, the informant and his two sons have received firearm injury. Learned counsel for the applicant has drawn attention of this Court to the First Information Report which is alleged to have been lodged by Umesh Chandra Agarwal and has been written by Himanshu Agarwal. Both are injured persons. The First Information Report has been lodged on 9.1.2023, at about 7.36 a.m., Learned counsel for the applicant further submits that the injured, Himanshu Agarwal, was referred to the District Hospital, however, he went to the private hospital where his injuries were examined. The injury report is at page 24 of the supplementary affidavit which is of Narayana Hospital. Umesh Chandra Agarwal has suffered two gun shot at left upper arm and phalanges. He further submits that the injury of Umesh Chandra Agarwal are not on the vital part. It is further submitted that even the statement of the Doctor which has been recorded by the Investigating Officer, which is at page 22 of the counter affidavit,

has not stated that the injury suffered by the injured, Umesh Chandra Agarwal and Himanshu Agarwal, were life threatening. Learned counsel for the applicant further submits that a bare perusal of the statement of the injured, Priyanshu Agarwal, would show that the injury attributed to Priyanshu Agarwal in the abdomen shown to have been caused by co-accused, Siddharth Dixit. It is submitted by learned counsel for the applicant that Himanshu Agarwal has suffered injury on the right arm. It is submitted by learned counsel for the applicant that the provisions of Section 307 I.P.C. may not be made out against the applicant as the injuries of Umesh Chandra Agarwal and Himanshu Agarwal are not on the vital part. He further submits that the applicant had no intention to commit culpable homicide. As per the prosecution, the applicant was carrying firearm and the injured were not having firearm and therefore he had no reason to have not cause injury on the vital part. However, firing has been made without the intention that the applicant would commit culpable homicide. He further submits that the injury of Priyanshu Agarwal, which is on the abdomen, is not related to the applicant as per the prosecution case itself. The applicant has no previous criminal history. He further submits that the applicant has been falsely implicated in the case. It is further submitted that at the best offence under Section 324 I.P.C. would be made out against the applicant. Applicant is languishing in jail since 17.01.2023 and in case he is released on bail, he will not misuse the liberty of bail and will cooperate in the trial.

4. Sri Rajesh Kumar Mishra, learned counsel for the informant submits that as per the prosecution case five accused persons have entered the shop and firing has been made. The injured, Priyanshu Agarwal, has suffered injury in the abdomen. Learned counsel for the informant does not dispute the fact that the injury attributed to the injured, Priyanshu Agarwal, is caused by Siddharth Dixit, as per the statement of the injured, Priyanshu Agarwal. He further does not dispute the fact that the injuries sustained by the other injured, Umesh Chandra Agarwal and Himanshu Agarwal, are on the arm and on the non-vital part. He further submits that the applicant and other accused persons were carrying weapon and they have fired indiscriminately and as a result of the same the injuries have been sustained. He further drawn attention of this Court to page no. 15 of the second counter affidavit which is part of the case diary to submit that the indiscriminate firing was made as per the case diary and no person was there ready to help the injured. Thereafter the injured was taken to District Hospital by Ambulance. He further submits that the case of Siddharth Dixit is

distinguishable from the applicant.

4-A. Learned A.G.A. for the State has adopted the argument of learned counsel for the informant. He submits that the applicant has no previous criminal history, however, subsequently Gangster Act has been imposed.

4-B. Learned A.G.A. for the State opposed the prayer for bail but does not dispute factual matrix of the case.

5. Learned AGA for the State has not brought any fact or circumstances to indicate criminal history or antecedents of the applicant which would disentitle the applicant for Bail.

6. It is not the case of the State that the applicant has not cooperated in the investigation or proceedings before the trial court.

7. The principle that Bail is a rule and Jail is an exception has been well recognised by Apex Court more specifically on the touch stone of Article 21 of the Constitution. The said principle has been reiterated by the Apex Court in **Satyendra Kumar Antil Vs. Central Bureau of Investigation and another, 2022 (10) SCC 51**. Learned AGA for the State has not shown any exceptional circumstances which would warrant denial of bail to the applicant.

8. No material, facts or circumstances has been shown by learned AGA for the State that the accused may tamper with the evidence or witnesses or the accused is of such character that his mere presence at large would intimidate the witnesses or that accused will use his liberty to subvert justice or tamper with the evidence.

9. It is settled principle of law that the object of bail is to secure the attendance of the accused at the trial. No material particulars or circumstances suggestive of the applicant fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like have been shown by learned AGA for the State.

10. Learned AGA for the State has not shown any material or circumstances that the accused/applicant is not entitled to bail in larger interests of the public or State.

10-A. It is to be seen that in the present case as per the prosecution case there was a dispute between the parties and a case was lodged. Thereafter on 8.1.2023 the nominated accused persons

have entered into the shop and have fired and as a result of the same the informant and his two sons have suffered injuries. It is further to be noted that injury of Priyanshu Agarwal as per his own statement is caused by the co-accused, Siddharth Dixit. The injuries of the other two injured, namely Umesh Chandra Agarwal and Himanshu Agarwal, are not on vital part being on the arm. The Doctor who has examined the injured have not stated that the injuries of the injured were life threatening. Applicant has no previous criminal history. Although applicant was carrying firearm at the place of the occurrence, however, the injuries on the arm is indicative of the fact that the applicant has no intention to commit culpable homicide although he may have intention to deter the injured from prosecuting the criminal case against the family members of the applicant.

11. Considering the facts and circumstances of the case, nature of offence, evidence, complicity of the accused, submissions of learned counsel for the parties and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.

12. Let the applicant-**Harshit Chouhan** involved in Case Crime No. 12 of 2023, under Sections 307, 120B, 452, 506 and 34 I.P.C. and Section 7 Criminal Law Amendment Act and Section 3/25 Arms Act, Police Station Aonwla, District Bareilly be released on bail on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to the following conditions:-

- i. The applicant will not tamper with the evidence during the trial.
- ii. The applicant will not pressurize/intimidate the prosecution witness.
- iii. The applicant will appear before the trial court on the date fixed, unless personal presence is exempted and/or the applicant shall make himself available for interrogation by a police officer as and when required. In the event applicant fails to appear before court concerned, the court concerned would be at liberty to take coercive measures including issuance of warrant.
- iv. The applicant shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.
- v. The applicant shall not directly or indirectly make any

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 to any police officer or tamper with the evidence.

vi. The applicant shall not leave India without the previous permission of the Court.

vii. In the event, the applicant changes residential address, the applicant shall inform the court concerned about new residential address in writing.

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

Order Date :- 18.10.2023

VMA