

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 22204 of 2023

Applicant :- Shahanshah

Opposite Party :- State of U.P.

Counsel for Applicant :- Neeraj Singh

Counsel for Opposite Party :- G.A.,A.C.Srivastava,Samir Srivastava

Hon'ble Samit Gopal,J.

1. List revised.
2. Heard Sri Neeraj Singh, learned counsel for the applicant, Sri Virendra Pratap Singh, learned counsel for the State and perused the material on record.
3. A.C.Srivastava and Sri Samir Srivastava, learned counsels for the first informant are not present despite the matter being taken up in the revised list.
4. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant Shahanshah, seeking enlargement on bail during trial in connection with Case Crime No. 417 of 2022, under Sections 302, 307, 506 I.P.C., registered at Police Station Nawabganj, District Prayagraj.
5. Learned counsel for the applicant at the very outset submits that co-accused Saurabh Mishra has been granted bail by a co-ordinate Bench of this Court vide order dated 05.10.2023 passed in CrI. Misc. Bail Application No. 50753 of 2022 (Saurabh Mishra Vs. State of U.P.), copy of the order has been produced before the Court which is taken on record. It is argued that the applicant is not named in the FIR. He was implicated in the present case on the basis of his name being disclosed by the co-accused in his confessional statement. Surendra Kumar Maurya is stated to be the main assailant. The deceased was found to have received a single firearm which was the cause of his death. It is argued that the case of the applicant is identical with that of co-accused who has been granted bail and as such he claimed parity. It is further argued that the applicant has no criminal history as stated in para 16 of the affidavit and is in jail since 17.07.2022.

6. Per contra, learned counsel for the State opposed the prayer for bail and argued that after the present case, the applicant was involved in two other cases being the recovery of a country made pistol and firing on police party. Para 12 of the counter affidavit has been placed before the Court but could not dispute the fact that the said co-accused has been granted bail.

7. After having heard learned counsels for the parties and perusing the records, it is evident that the order of co-accused Saurabh Mishra having an identical case as that of the applicant has been granted bail by a co-ordinate Bench of this Court. The said order reads as under:-

"By means of the bail application the applicant has prayed to be enlarged on bail in Case Crime No.417 of 2022 at Police Station-Nawabganj, District-Allahabad under Sections 302, 307, 506, 120B IPC. The applicant is in jail since 18.07.2022.

The bail application of the applicant was rejected by the learned trial court on 25.08.2022.

The following arguments made by Shri Ravikant Tiwari, learned counsel on behalf of the applicant, which could not be satisfactorily refuted by Shri Rishi Chaddha, learned A.G.A. from the record, entitle the applicant for grant of bail:

- 1. The applicant was not named in the F.I.R.*
- 2. The applicant was nominated in the statement of a co-accused while he was in police custody. The said statement insofar as it implicates the applicant is inadmissible in evidence.*
- 3. The prosecution evidence identifies one Surendra Kumar Maurya as the principal offender who discharged the firearm and inflicted the fatal injury on the person of the deceased.*
- 4. The applicant claims congruency in role and seeks parity in relief granted to the co-accused persons, namely, Neeraj Pratap Singh and Dheeraj Pratap Singh who have been enlarged on bail by this Court on 20.07.2023 and 26.04.2023 in Criminal Misc. Bail Application No.2433 of 2023 and Criminal Misc. Bail Application No.31717 of 2023 respectively.*
- 5. The applicant does not have any criminal history apart from this case.*
- 6. The applicant is not a flight risk. The applicant being a law abiding citizen has always cooperated with the investigation and undertakes to cooperate with the court proceedings. There is no possibility of his influencing witnesses, tampering with the evidence or reoffending.*

Learned AGA contends that the applicant has a criminal history of one more case under the Arms Act.

Rejoining this issue, Shri Ravikant Tiwari, learned counsel for the applicant contends that the applicant is in jail. The applicant is a poor person and he does not have an effective pairorakar. Hence, details of the case could not be obtained and stated in the bail application. However, relying on the records available with the learned AGA and the instructions received from his client, learned counsel for the applicant submits that the said case was instituted after the instant case under the Arms Act. The applicant has been falsely nominated in the said case to burnish credentials of the police authorities. The said case has no bearing on the instant bail application.

In the light of the preceding discussion and without making any observations on the merits of the case, the bail application is allowed.

Let the applicant-Saurabh Mishra be released on bail in the aforesaid case crime number, on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court below. The following conditions be imposed in the interest of justice:-

(i) The applicant will not tamper with the evidence or influence any witness during the trial.

(ii) The applicant will appear before the trial court on the date fixed, unless personal presence is exempted."

8. Looking to the facts and circumstances of this case, the nature of evidence, considering the fact of parity and also the absence of any convincing material to indicate the possibility of tampering with the evidence, this Court is of the view that the applicant may be enlarged on bail.

9. Let the applicant **Shahanshah**, be released on bail in the aforesaid case crime number on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice:-

i) The applicant will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

ii) The applicant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the date fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(iv) The applicant will not misuse the liberty of bail in any manner whatsoever. In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under section 82 Cr.P.C., may be issued and if applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under section 174-A I.P.C.

(v) The applicant shall remain present, in person, before the trial court on dates fixed for (1) opening of the case, (2) framing of charge and (3) recording of statement under Section 313 Cr.P.C. If

in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law and the trial court may proceed against him under Section 229-A IPC.

(vi) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicant.

10. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail and send the applicant to prison.

11. The bail application is ***allowed***.

Order Date :- 13.12.2023

M. ARIF

(Samit Gopal, J.)