

Court No. - 78

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 24556 of 2023

Applicant :- Fahad @ Wasiurrahman

Opposite Party :- State of U.P.

Counsel for Applicant :- Ajay Srivastava, Mohd. Farooq

Counsel for Opposite Party :- G.A., Chandra Kant Bharadwaj

Hon'ble Raj Beer Singh, J.

1. Heard Sri Ajay Srivastava, learned counsel for the applicant, Sri Chandra Kant Bharadwaj, learned counsel for the informant and Sri Manish Goyal, learned Additional Advocate General along with learned A.G.A. for the State.

2. The present second bail application has been filed by the applicant in Case Crime No. 732 of 2021, under sections 147, 148, 149, 323, 504, 506, 307, 308, 386, 427 IPC, Police Station - Kareli, District - Prayagraj with the prayer to enlarge the applicant on bail. The first bail application of applicant was rejected by co-ordinate Bench of this Court on merits, vide order dated 14.03.2023.

3. According to prosecution version, on 31.12.2021 at 03:45 PM the named accused persons along with 15 unknown persons came in three vehicles at the house of informant. Co-accused Ali put pistol at the temple of informant and asked him to talk with his father and when informant refused, accused persons threatened to kill the informant and demanded ransom of Rs. 5 crores or to transfer his land situated at Ainuddinpur in favour of mother of co-accused Ali. On resistance of informant, all the accused persons have assaulted the informant and his relatives, namely, Gufran, Fahad and Ali Jafar with rifle, pistol and etc. Resultantly, they sustained injuries and they were sent to hospital. It was further alleged that the accused persons have got demolished the office of the informant by Joseph Cyril Bramford (JCB) and that co-accused Ali and Ashad did firing pointing at

informant, however, the informant escaped by coming in the side of wall. Thereafter police reached at the spot and accused persons ran away by threatening the informant. Applicant is not named in the first information report and his involvement was revealed during investigation.

4. It has been argued by learned counsel for the applicant that applicant is innocent and he has been falsely implicated in this case. Applicant is not named in the first information report and he was also not named by the informant in his statement under Section 161 Cr.P.C. Thereafter statement of informant under Section 164 Cr.P.C. was recorded but even in that statement, applicant was not named. The name of applicant has figured for the first time in the statement of injured witness but no specific role has been assigned to the applicant. Only one injury shown to injured Gufran was grievous in nature and there is such evidence that which of the accused is author of the said injury. The informant is a person of criminal background and he is having criminal history and there are as many as nine cases to his credit. Co-accused Sanjay Singh has already been granted anticipatory bail. Referring to the facts of the matter and statements of witnesses, it was submitted that there is no credible evidence against the applicant.

5. It is further submitted that the first bail application of applicant was rejected by co-ordinate Bench of this Court on merits, vide order dated 14.03.2023, and since then a period of more than 08 months has already been passed and that the applicant has already undergone the detention of about 01 year and 10 months and that applicant has no previous criminal history. Lastly, it was submitted that in case applicant is enlarged on bail, the applicant will not misuse the liberty of bail.

6. Learned A.A.G. and learned counsel for the informant have opposed the prayer for bail and argued that injured persons have named the applicant as one of the assailant. In the incident, three persons, namely, Gufran, Fahad and Ali Zafar have sustained injuries and they have categorically named the applicant and thus, the mere fact that the applicant was not named in the first information report or in the statement of informant, does not create any dent

in the prosecution version. At the time of arrest of applicant, he has admitted his involvement in the alleged incident. In the alleged incident, the office of informant was also destroyed by the accused persons by using J.C.B. machine. The injury of injured Gufran was grievous in nature. Besides this case, the applicant has criminal history of one case under Arms Act.

7. Learned A.A.G. further submitted that applicant is a member of gang/syndicate of dreaded criminal Mafiya Ateeq Ahmad (since died) and that syndicate is having terror in the society. The charges have already been framed against the accused persons and part statement of informant/PW-1 has already been recorded. It is further submitted that the first bail application of applicant was rejected by this Court on merits and no new ground in this second bail application could be shown. Referring to the facts of the matter, it was submitted that applicant is not entitled for bail.

8. I have considered rival submissions and perused the record.

9. Perusal of record shows that applicant is not named in the first information report and he was also not named by the informant in his statements, recorded under Sections 161 and 164 Cr.P.C. The name of applicant has figured for the first time in the statement of injured witness. In the alleged incident, three persons were shown injured and out of them, two injured persons have sustained simple injuries and that the third injured has sustained one grievous injury i.e. *comminuted fracture right zygomatic arch with fracture zygomatic process maxilla*. The first bail application of applicant was rejected on 14.03.2023 but now he has already undergone the detention of about 01 year and 10 months and the trial of the case is likely to take sufficiently long time in its conclusion. Applicant has no criminal history. The bail applications of co-accused Mohd. Saif @ Maya, Ali @ Ali Ahmad @ Mohd. Ali Ahmad and Mohd. Aman were rejected by co-ordinate Bench of this Court but the case of applicant is distinguished from them and after rejection of bail applications of said co-accused persons, sufficient time has been passed. The statement of informant has already been recorded by the trial court.

10. Considering the submissions of learned counsel for the parties, nature of evidence, period of custody and all attending facts and circumstances of the case, without expressing any opinion on the merits of the case, a case for bail is made out. Hence, the present second bail application is hereby **allowed**.

11. Let the applicant **Fahad @ Wasiurrahman** involved in the aforesaid crime be released on bail on furnishing a personal bond and two local sureties each of the like amount to the satisfaction of court concerned subject to the following conditions:

- i. The applicant will not tamper with the evidence during trial.
- ii. The applicant will not pressurize/intimidate the prosecution witnesses.
- iii. The applicant will appear before the trial court on the date fixed, unless personal presence is exempted.
- iv. The applicant will not try to contact, threat or otherwise influence the informant or any of the witness of the case.

12. In case of breach of any of the above condition, the trial court shall be at liberty to cancel the bail of applicant in accordance with law.

Order Date :- 22.11.2023

Anand