

Neutral Citation No. - 2023:AHC:208772

Reserved On:- 27.10.2023

Delivered On:-01.11.2023

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 29271 of 2023

Applicant :- Harish

Opposite Party :- State of U.P.

Counsel for Applicant :- Inder Pal Singh Tomar, Anjali Singh Tomer

Counsel for Opposite Party :- G.A., Abhilasha Singh, Ashutosh Yadav, Saksham Srivastava, Sanjay Mishra, Shyam Lal

Hon'ble Siddharth, J.

1. Heard Ms. Anjali Singh Tomar, learned counsel for the applicant; Sri G.N. Kanaujiya, the learned AGA-1 for the State and perused the material placed on record.
2. The instant bail application has been filed on behalf of the applicant, **Harish**, with a prayer to release him on bail in **Case Crime No. 364 of 2022, under Sections 147, 148, 149, 302, 307, 323, 504 IPC, Police Station- Sikandrara, District- Hathras**, during pendency of trial.
3. There is allegation in FIR that on 12.07.2022 at about 4:00 pm co-accused, Kaushal @ Dharmendra, was abusing the brother of informant after consuming liquor when his brother protested co-accused aforesaid started beating him. On account of aforesaid incident on next day i.e., 13.07.2022, at about 10:00 pm co-accused, Kaushal @ Dharmendra, alongwith his family members, namely, Babloo @ Rajesh Pratap, Harish, Arvind, Aman, Surjeet and Arun with common object armed with licensed and unlicensed five weapons came on the door of the house of the informant and started abusing his brother. Thereafter, they fired on the brother and informant. Shayamu, Veer Pal and Parvesh, who were present on the spot also got injured. Jaikishan aged about 12 years who was standing there, died on the spot. Rahul and Ramu, who tried to save the aforesaid child were also beaten by butt of the gun.
4. Learned counsel for the applicant has submitted that seven accused including the applicant are alleged to have assaulted the deceased and the injured with fire arms, but the injuries have been sustained by the injured on non-vital parts of their body. The deceased sustained only one gun shot injury. It is not clear who caused the aforesaid fatal injury to the deceased boy aged about 12 years. Role of firing by fire arms was assigned fire to the co-accused, Babloo, Kaushal, applicant, Harish and co-accused,

Arvind. Co-accused, Arvind, who was also assigned the role of causing fire arm injury to the deceased, has already been enlarged on bail by coordinate Bench of this Court vide Criminal Misc. Bail Application No. 23073 of 2023. Learned counsel for applicant has further submitted that before the trial court P.W.-1 and 2 have been examined. The informant has stated that before trial court that the incident was not committed at his house, but on the *chauraha* of the village which is in contradiction from the allegations made in the FIR. The injured witness, Shyamu, in his statement recorded under Section 161 Cr.P.C., also stated the place of incident was the house of informant. He has further submitted that P.W.-1 and P.W.-2 have not clearly stated who caused the injuries to the injured. He has further submitted that only two prosecution witnesses have been examined till date. The applicant has been falsely implicated in this case. He has no criminal history to his credit and is languishing in jail since 13.07.2022. The trial in the aforesaid case is not likely to be concluded in near future.

5. Per contra learned A.G.A. has opposed the prayer for bail of the applicant and submitted that it is a case daredevil murder of one person of causing injuries to many injured. In case the applicant is released on bail he will again indulge in similar activities and will misuse the liberty of bail.

6. Having considered the submissions of the parties noted above, finding force in the submissions made by the learned counsel for the applicant, keeping in view the uncertainty regarding conclusion of trial; one sided investigation by police, ignoring the case of accused side; applicant being under-trial having fundamental right to speedy trial; larger mandate of the Article 21 of the Constitution of India, considering the dictum of Apex Court in the case of ***Satendra Kumar Antil Vs. C.B.I. & Another, passed in S.L.P.(Crl.) No. 5191 of 2021, judgement dated 11.7.2022*** and considering 5-6 times overcrowding in jails over and above their capacity by under trials and without expressing any opinion on the merits of the case, let the applicant involved in the aforesaid crime be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions that :-

(i) The applicant shall not tamper with the evidence or threaten the witnesses.

(ii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates 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.

(iii) The applicant shall remain present before the Trial Court on each date fixed, either personally or as directed by the Court. In case of his absence, without sufficient cause, the Trial Court may proceed against him under Section 229-A of the Indian Penal Code.

(iv) In case the applicant misuse the liberty of bail during trial and in order to secure his presence, proclamation under Section 82 Cr.P.C. is issued and the applicants fail 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 of the Indian Penal Code.

(v) The applicant shall remain present in person before the Trial Court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) 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.

7. In case, of breach of any of the above conditions, it shall be a ground for cancellation of bail.

8. Identity and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

Order Date :-01.11.2023

Abhishek