

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 31212 of 2023

Applicant :- Jitendra Gaur

Opposite Party :- State of U.P.

Counsel for Applicant :- Brajesh Kumar Singh, Ram Krishna Dixit

Counsel for Opposite Party :- G.A., Bhriguram Ji, Shashi Shekhar Maurya

Hon'ble Samit Gopal, J.

1. List revised.

2. Heard Sri Brajesh Kumar Singh, learned counsel for the applicant, Sri Ajay Singh, learned A.G.A-I for the State and perused the material on record. Sri Bhriguram Ji and Sri Shashi Shekhar Maurya, learned counsels for the first informant are not present even when the matter has been taken up in the revised list.

3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant-Jitendra Gaur, seeking enlargement on bail during trial in connection with Case Crime No.237 of 2023, under Sections 147, 149, 323, 504, 506, 308, 304 IPC and 7 CrL. Law Amendment Act, registered at Police Station Jhangha, District Gorakhpur.

4. The FIR of the matter was lodged on 31.5.2023 by Umesh Gupta against twelve named persons including the applicant and four unknown persons alleging therein that the accused persons with wooden sticks, assaulted his father Gena Lal Gupta and Sunita Devi. Gena Lal Gupta received injuries and died.

5. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that common and general role has been assigned to the applicant with eleven named and four unknown persons. It is argued that there is no recovery from the possession of the applicant and the recovery shown of alleged murder weapon is from the possession of the co-accused Golu who has been granted bail by this Court, para 26 of the affidavit has been placed before the Court. It is argued that co-accused Rajesh @ Padhoi, Deepak Kumar Yadav, Vikas Gond, Vishnu Dev and Golu @ Suraj Gond have been granted bail by coordinate Benches of this Court as well as by this Court vide orders dated 27.7.2023, 18.8.2023, 18.8.2023 and 20.11.2023 passed in Criminal Misc. Bail Application Nos.32968 of 2023,

36157 of 2023, 36231 of 2023 and 44404 of 2023, copies of the same have been produced by learned counsel for the applicant which are taken on record. It has also been pointed out that the applicant is not having any criminal history as stated in para 28 of the affidavit. The applicant is in jail since 1.6.2023.

6. Per contra learned counsel for the State opposed the prayer for bail.

7. After hearing the counsel for the parties and perusing the record, it is evident that common and general role has been assigned to the applicant with eleven named and four unknown persons. Co-accused persons have been granted bail. No recovery has been made from the possession of the applicant or at his pointing out.

8. Looking to the facts and circumstances of this case, the nature of evidence 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-**Jitendra Gaur**, 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**.

(Smit Gopal, J.)

Order Date :- 14.12.2023

Gaurav Kuls