

Court No. - 77

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 36043 of 2023

Applicant :- Shoyaib @ Sharik Javed

Opposite Party :- State of U.P.

Counsel for Applicant :- Yogesh Kumar Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Mrs. Renu Agarwal,J.

Supplementary affidavit filed today in the Court, which is taken on record.

Heard learned counsel for the applicant, learned A.G.A. for the State and perused the material brought on record.

The present application under Section 439 Cr.P.C has been filed seeking bail in Case Crime No.266 of 2023, under sections 323, 336, 307, 427, 504, 506, IPC, and section 7 Criminal Law (Amendment) Act, Police Station Civil Lines, District Aligarh.

Learned counsel for the accused-applicant submitted that the applicant is innocent and has been falsely implicated in the instant case due to ulterior motives. It is submitted that there are contradictions in the version of FIR and the statements of witnesses. As per the version of FIR applicant has been assigned role of shot fire on the injured by country made pistol, whereas, as per the statement of witnesses the applicant is said to have assault the injured by wicket. As per the medical examination report the injured has not received any injury of fire arm. No weapon was recovered by the police from the possession of applicant. It is further submitted that general role of assault has been assigned to all the assailants and no specific role has been assigned to the present applicant. Applicant has criminal history of three cases, in which he has been enlarged on bail. Copy of bail orders are collectively annexed as annexure number S.A.-1 to the supplementary affidavit dated 10.10.2023. Applicant is languishing in jail since 19.05.2023 and in case she is granted bail, she will not misuse the liberty and would cooperate in the trial proceedings.

On the other hand, learned AGA has opposed the prayer for bail and submitted that injured has received grievous injuries in the incident and main allegation of shot fire on the injured has been assigned to the present applicant, hence opposed the prayer of bail.

Considering the facts and circumstances of the case and taking into account that there are contradictions in the version of FIR and the statements of witnesses, as per the version of FIR applicant has been assigned role of shot fire on the injured by country made pistol, whereas, as per the statement of witnesses the applicant is said to have assault the injured by wicket, as per the medical examination report the injured has not received any injury of fire arm, no weapon was recovered by the police from the possession of applicant, general role of assault have been assigned to all the assailants and no specific role has been assigned to the present applicant, applicant has criminal history of three cases, in which he has been enlarged on bail, applicant is languishing in jail since 19.05.2023 and undertakes that in case he is granted bail, he will not misuse the liberty and would cooperate in the trial proceedings, without expressing any opinion on the merit of the case, it would be appropriate to enlarge the accused-applicant on bail.

Let applicant **Shoyaib @ Sharik Javed** be released on bail in the above case crime number on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of Court concerned with the following conditions :-

(i) The applicants shall file an undertaking to the effect that they 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.

(ii) The applicants shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of their absence, without sufficient cause, the trial court may proceed against them under Section 229-A of the Indian Penal Code.

(iii) In case, the applicants misuses 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 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 of the Indian Penal Code.

(iv) The applicants 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.

(v) The applicants shall also furnish an undertaking from the sureties that the properties (movable/immovable) which are the basis of accepting the surety, shall not be disposed of by them till the conclusion of trial.

(vi) The applicants shall also give an undertaking to the effect that they will not change their address without prior intimation to the trial court concerned.

(Renu Agarwal,J.)

Order Date :- 12.10.2023
VKG