

Court No. - 84

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 36674 of 2023

Applicant :- Mohit Yadav

Opposite Party :- State of U.P.

Counsel for Applicant :- Shailendra Kumar Yadav, Sunil Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Mrs. Sadhna Rani (Thakur), J.

Supplementary affidavit filed by the learned counsel for the applicant is placed on record.

Heard learned counsel for the applicant and Sri Shamsheer Bahadur Maurya, learned A.G.A. on the second bail application.

This is the second bail application moved on behalf of applicant Mohit Yadav with the prayer to release him on bail in Case Crime No. 524 of 2021, under Section 302 I.P.C., Police Station- Shivpur, District Varanasi.

It is argued by the learned counsel for the applicant that the first bail application of the applicant was rejected by this Court on 03.11.2022. Thereafter the statement of only eye witness of the alleged incident has been recorded on 05.07.2023, wherein he has not supported the prosecution version in his cross-examination. There is no other eye witness of the incident as per FIR. The applicant is languishing in jail since 11.10.2021, hence, the prayer for bail is made.

Learned A.G.A. opposed the second bail application.

From the perusal of the record, it found that as per FIR the present applicant is shown to be the main accused opening fire on the deceased and causing his death. In the charge-sheet, 16 persons have been mentioned as prosecution witnesses. Only PW2- Akshay Gupta, the brother of the deceased is shown as the eye witness of the incident, while rest two witnesses of fact Priyanshu and Bharat Lal Gupta are not the eye witnesses of the incident as per the version of FIR.

If we go through the statement of PW-2, the only eye witness as

mentioned in the first information report, though in his examination-in-chief he has supported the prosecution version but in his cross-examination in so many words he has stated that at the time of incident he was present in his house. He did not witness the incident as he was not present on the spot at the time of incident. As per FIR, the only eye witness is Akhsay Gupta, who has not supported the prosecution version in the trial court as PW-2. Rest persons mentioned in the FIR Priyanshu and Bharat Lal Gupta, are not the eye witnesses as per prosecution version. The applicant is languishing in jail since 11.10.2021.

Perusing the record, considering the facts and circumstances of the case, the nature of allegations, arguments advanced by the learned counsel for the parties and without expressing any opinion on the merit of the case, I find it to be a fit case for granting bail to the applicant.

The second bail application is allowed.

Let applicant- **Mohit Yadav**, who is involved in the aforesaid case 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 subject to following conditions:-

1. The applicant will attend and co-operate in the trial pending before the court concerned on the dates fixed after release.
2. The applicant will not tamper with the witnesses.
3. The applicant will not indulge himself in any illegal activities during the bail period.

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

It is clarified that the observations, if any, made in this order are strictly confined to the disposal of this bail application and must not be construed to have any reflection on the ultimate merits of the case.

Order Date :- 16.10.2023

Radhika