

Court No. - 77

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 37371 of 2023

Applicant :- Amaan

Opposite Party :- State of U.P.

Counsel for Applicant :- Ali Bin Saif

Counsel for Opposite Party :- G.A.

Hon'ble Mrs. Renu Agarwal,J.

1. Supplementary affidavit filed today is taken on record.
2. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.
3. The present first bail application has been filed on behalf of the applicant in Case Crime No. 266 of 2023 under Sections 323, 336 307, 427, 504, 506 I.P.C. and 7C of Criminal Amendment Act Police Station Civil Lines, District Aligarh with the prayer to enlarge him on bail.
4. Learned counsel for the accused-applicant submitted that the applicant is innocent and has been falsely implicated in the instant case due to malafide intentions. F.I.R. has been lodged against five persons and as per the F.I.R. it is alleged that accused named in the F.I.R. assaulted one Imran with some sharp weapon. It is submitted that no specific role of assault is assigned to the present applicant. It is further submitted that specific role of hitting injured person with country made pistol as well as of firing has been assigned to two other co-accused namely, Shoyaib @ Sharik Javed and Kaif. It is next submitted that role of assault of applicant is lesser than that of aforesaid two co-accused who were having

country made pistols in their hands and the case of the present applicant is at a better footing. It is next contended that co-accused person, Shoyaib @ Sharik Javed and Kaif have already been enlarged on bail by co-ordinate Bench of this Court vide order dated 12.10.2023 passed in Criminal Misc. Bail Application No. 36043 of 2023 and vide order dated 06.10.2023 passed by the court below. The applicant is languishing in jail since 08.07.2023 having criminal history of three cases which has been explained in paragraph No. 3 of the supplementary affidavit filed today. It is lastly submitted that since the role of assault of the present applicant is lesser than that of co-accused, who have already been enlarged on bail, present applicant is also entitled to be enlarged on bail on the ground of parity and if he is granted the liberty of bail he will not misuse the same and he is ready to furnish his sufficient sureties, bonds and personal bonds and shall co-operate in the trial.

5. On the other hand, learned AGA has vehemently opposed the prayer for bail but could not controvert the fact that identically situated co-accused has been enlarged on bail.

6. Considering the fact that no specific role of assault has been assigned to the present applicant, specific role of assault has been attributed to co-accused Shoyaib @ Sharik Javed and Kaif who have already been enlarged on bail, role of assault of the present applicant is lesser than that of co-accused and without expressing any opinion on the merits of the case, accused-applicant is liable to be released on bail.

7. Let applicant **Amaan** be released on bail in the above case crime number and 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 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.

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

(iii) 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. is issued and the 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 of the Indian Penal Code.

(iv) 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.

(v) The applicant 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 applicant shall also give an undertaking to the effect that he will not change his address without prior intimation to the trial court concerned.

(Renu Agarwal,J.)

Order Date :- 16.10.2023

Karan