

Court No. - 68

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 38481 of 2023

Applicant :- Santoki

Opposite Party :- State of U.P.

Counsel for Applicant :- Abhilasha Singh, Ashutosh Yadav, Shyam Lal

Counsel for Opposite Party :- G.A.

Hon'ble Dr. Gautam Chowdhary, J.

1. Heard Ms. Abhilasha Singh, learned counsel for the applicant as well as learned A.G.A. for the State and perused the record.

2. This is the second bail application filed on behalf of accused/applicant-Santoki. The first bail application was rejected by a coordinate Bench of this Court vide order dated 18.08.2021 passed in Criminal Misc. Bail Application No. 28170 of 2021.

3. Learned counsel for the applicant submits that the applicant is named in the F.I.R. along with other three other persons, namely, Manoj, Ram Sewak, Rambhup and Jaypal. The F.I.R. was lodged by the complainant-Talebar on 12.02.2021 at 14:15 hours with regard to an incident dated 11.02.2021 at about 4:30 p.m. with the allegation that the named accused persons are his co-villagers and in relation with him, they were having enmity with the complainant and his family on account of partition of land, earlier they also committed marpeet with the complainant's family members, and today at about 4:30 p.m. when his younger brother went to the agricultural field to disperse stray animals and to mow the grass then the accused Manoj having *Farsa* in his hands, accused Ram Sewak having *Kunda* in his hands, accused Santoki (applicant) having *Bhala* in his hands, accused Jaypal armed with country made pistol and accused Rambhup having *lathi* in his hands, surrounded him and started assaulting and thrashing him and on noise when Rishipal, Rajnesh and other persons reached at the spot, then the accused Jaypal made shot from his country made pistol for threatening them and all the accused persons fled away from the spot, thereafter, the injured was brought to Rajpura Hospital, from where he was referred to Sambhal District Hospital, thereafter, he was referred to District Hospital, Moradabad, and on the way he died. Learned counsel for the applicant further submits

that statements of complainant and other witnesses were recorded by the police wherein the complainant has repeated the same version as alleged by him in the F.I.R. Learned counsel for the applicant further submits that after due investigation the police filed charge sheet against three persons namely, the present applicant, Ram Sewak and Manoj, and exonerated the two accused Jayram and Rambhup, who were also named in the F.I.R. Learned counsel for the applicant further submits that the alleged incident took place on 11.02.2021 of which F.I.R. was lodged on 12.02.2021 and prosecution has cited 29 witnesses in the charge sheet, out of which only one witness, i.e., complainant has been examined till date as P.W.1. Learned counsel for the applicant further submits that after passing of the first bail rejection order of the applicant, the complainant has been examined before the court below on 09.05.2022, wherein he had categorically stated that he had not seen the incident, he reached at the spot after occurrence of incident, his niece Pushpa @ Anita hold him about the occurrence, he does not know that whether police has recorded statement of Anita or not, thus, learned counsel for the applicant submits that the complainant (P.W.2) has become hostile, hence, there is bleak chance that prosecution may prove its case beyond reasonable doubt and the applicant may be convicted. Learned counsel for the applicant further submits that co-accused, Manoj and Ram Sewak have already been granted bail by this Court vide orders dated 15.05.2023 and 04.08.2023 passed in Criminal Misc. Bail Application No. 12973 of 2023 and Criminal Misc. Bail Application No. 52565 of 2021, but she is not claiming parity from them. Several other submissions in order to demonstrate the falsity of the allegations made against the applicant have also been placed before the Court. The circumstances which, according to the counsel, led to the false implication of the accused have also been mentioned. It has also been assured on behalf of the applicant that he is ready to cooperate with the process of law and shall faithfully make himself available before the court whenever required and is also ready to accept all the conditions which the Court may deem fit to impose upon him. He next submits that applicant is languishing in jail since 09.03.2021, having no criminal history and has already undergone a substantial period of incarceration, therefore, he deserves to be enlarged on bail sympathetically.

4. Per contra, learned A.G.A. has opposed the prayer for bail of the applicant by contending that the innocence of the applicant cannot be adjudged at pre trial stage, therefore, he does not deserve any indulgence.

5. After perusing the record in the light of the submissions made at the bar and after taking an overall view of all 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, without expressing any opinion on merits of the case, this Court is of the view, that the applicant may be enlarged on bail.

6. Let applicant-**Santoki**, involved in Case Crime No. 21 of 2021, under Sections 147, 148, 149, 323, 304, 506 I.P.C., Police Station Rajpura, District Sambhal, be enlarged on bail on furnishing a personal bond and two heavy local sureties each of the like amount to the satisfaction of the court concerned subject to the following conditions:-

(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.

7. 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 in accordance with law.

8. The bail application is **allowed**.

Order Date :- 28.10.2023

Mustaqeem.