

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 39858 of 2023

Applicant :- Ziaul Haq

Opposite Party :- State of U.P.

Counsel for Applicant :- Sandeep Tripathi, Mohammad Faisal Khan

Counsel for Opposite Party :- G.A., Mohd. Akbar Shah Alam Khan

Hon'ble Vivek Varma, J.

1. Supplementary affidavit filed by the counsel for the applicant, is taken on record.
2. Heard learned counsel for the applicant, Sri Ajay Kumar Yadav, Advocate holding brief of Sri Mohd. Akbar Shah Alam Khan, learned counsel for the informant and learned AGA for the State-respondent.
3. The instant bail application under Section 439 Cr.P.C. has been filed with a prayer to enlarge the applicant on bail in Case Crime No. 393 of 2023, under Sections 307, 34 IPC and Section 3/25/27, Police Station Kotwali Nagar, District Muzaffar Nagar, during the pendency of trial.
4. Counsel for the applicant submits that the applicant has been falsely implicated in the instant case. As per the allegations in the FIR the co-accused Shahnawaj and Ahshan were indulged in a scuffle. The applicant and co-accused Shahnawaj both fired at Ahshan. One shot hit the son of the informant. It is contended that the applicant did not had any intent to murder the injured. Even, otherwise the injury is on non vital part of the body. In the FIR, two persons are alleged to have fired. However, in the statement of the injured recorded after almost two months, the applicant was named. It is contended that the said statement is an after thought and it discredits the prosecution case. The applicant is in jail since 16.07.2023 having no criminal history and in case he is enlarged on bail, he will not misuse the said liberty.
5. Learned AGA and learned counsel for the informant have opposed the prayer for bail but could not satisfactorily dispute the aforesaid submissions from the record.
6. Having heard counsel for the parties and having perused the record, this Court prima facie finds that the injury sustained by the injured is on non vital part of the body. At this stage, it cannot be said that the applicant had any intent to murder the injured. The applicant has no criminal antecedents. The

applicant has remained confined for more than three months and after submission of the charge-sheet there is no hope of early conclusion of trial, more so when no reasonable apprehension has been brought to the fore by the State that the applicant, if enlarged on bail, would either tamper with the evidence or delay the trial or intimidate the witness, without commenting on the merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

7. Let the applicant **Ziaul Haq**, 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 the conditions that he:

(i) shall appear on the date fixed by the trial court;

(ii) shall not tamper with the prosecution evidence; and,

(iii) shall not pressurize the prosecution witnesses.

8. In case of breach of any of the above conditions, the prosecution shall be at liberty to move bail cancellation application before this Court.

Order Date :- 2.11.2023

Lbm/-