

Neutral Citation No. - 2023:AHC:201052

Reserved On:- 11.10.2023

Delivered On:- 17.10.2023

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41516 of 2023

Applicant :- Udal

Opposite Party :- State of U.P.

Counsel for Applicant :- Alok Kumar Srivastava, Yogesh Kumar

Counsel for Opposite Party :- G.A., Vikas Rastogi

Hon'ble Siddharth, J.

1. Heard Sri Alok Kumar Srivastava, learned counsel for the applicant, Sri Vikas Rastogi, learned counsel for the informant and learned AGA for the State.

2. There is allegation in the FIR that informant and his brother, Lakhan Singh, have dispute regarding partition of land with members of his family, Nirpath and Mahavir and litigation is pending between them. Aunt (*bua*) of the informant was also having ill-eye on the land of informant and his brother and therefore she used to instigate Nirpath and Mahavir against the applicant and his brother. On 03.02.2020 co-accused, Nirpath, Himanshu, Bunt, Indra Devi, were pressurizing them to withdraw the case and when they refused they threatened them of dire consequences. On account of aforesaid enmity on 17.03.2023 at about 10:00 p.m in the night, two miscreants wherein one was of the height of co-accused, Himanshu, came covering their faces and started abusing Lakhan Singh and fired on him and injured him. Later Lakhan Singh died in the hospital during treatment. The incident was seen by sons of Lakhan, Devendra and Manish, Pawan son of Kartar and also his mother, Ramwati and daughter,

Bhawna. FIR was lodged against the named accused, Bunty, Himanshu, Nirpath and Indra devi.

3. Counsel for the applicant submits that the applicant was not named in the FIR. He was arrested on the basis of information received by sub-informer and recovery of one country made pistol, one live cartridge and Rs. 12,000/- cash was made from him. Except the confessional statement of the applicant at the time of alleged recovery, there is nothing against him. There is no evidence connecting him or weapon allegedly recovered from him which was used in the alleged crime. Similarly, one Kana @ Rohit Chaudhary, was also arrested and recovery of one country made pistol, 3 empty cartridges, one live cartridge and Rs. 600/- was made from him.

4. Counsel for the applicant further submits that during investigation, it was found that it was the informant who got his own brother, Lakhan Singh, murdered by applicant and two unnamed accused and the named accused were got exonerated but there is neither any eye-witness of the incident nor any witnesses have identified him. The C.C.T.V footage which was also there but is stated to have been thrown in the Yamuna river and therefore there is no evidence worth reliance against the applicant. It is a case of false implication of applicant only to exonerate the named accused and implicate the informant himself in this case. Rs. 12,000/0 recovered from the applicant belongs to him and it was not given by the informant and co-accused, Surendra Singh, to him. The applicant is in jail since 23.03.2023 and has no criminal history to his credit.

5. On the other hand learned A.G.A and learned counsel for the informant have vehemently opposed the prayer for bail.

6. Keeping in view the nature of the offence, evidence, complicity of the accused; submissions of the learned counsel for the parties noted above; finding force in the submissions made by the learned counsel for the applicant; keeping view the uncertainty regarding conclusion of trial; one sided investigation by police, ignoring the case of accused side; applicant being under-trial having fundamental right to speedy trial; larger mandate of the Article 21 of the Constitution of India; considering the dictum of Apex Court in the case of ***Satendra Kumar Antil vs. C.B.I., passed in S.L.P (Crl.) No. 5191 of 2021***; considering 5-6 times overcrowding in jails over and above their capacity by the under trials and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.

7. Let the applicant, Udal, involved in Case Crime No. 300 of 2023, under Sections- 302, 201, 120-B, 34 IPC, Police Station- Highway, District- Mathura, 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. Further, before issuing the release order, the sureties be verified.

(i) The applicant shall not tamper with the evidence or threaten the witnesses.

(ii) 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.

(iii) The applicant shall remain present before the Trial Court on each date fixed, either personally or as directed by the Court. In case of his absence,

without sufficient cause, the Trial Court may proceed against him under Section 229-A of the Indian Penal Code.

(iv) 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.

(v) 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.

8. In case, of breach of any of the above conditions, it shall be a ground for cancellation of bail.

9. Identity and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

Order Date :- 17.10.2023

Rohit