

Court No. - 76

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 39419 of 2023

Applicant :- Ajay Alias Bittu

Opposite Party :- State of U.P.

Counsel for Applicant :- M J Akhtar, Sr. Advocate

Counsel for Opposite Party :- G.A., Ram Krishna Yadav, Rohan Gupta

Hon'ble Vikram D. Chauhan, J.

1. Learned A.G.A. for the State submits that instructions have been received and has no objection in case the bail application is heard on merits.

2. Heard Sri V.M. Zaidi, learned Senior Advocate assisted by Sri M.J. Akhtar, Advocate appearing for the applicant, Sri Rohan Gupta, advocate assisted by Sri Ram Krishna Yadav, counsel for the informant and learned A.G.A. for the State and perused the record.

3. It is submitted by learned counsel for the applicant that in the present case first information report was lodged on 8th March 2023 at 2355 hours in respect of occurrence of 8th March 2023 at 1930 hours. Learned counsel for the applicant submits that as per the allegations in the first information report, it is alleged that the nominated accused persons including the applicant came to the house of the informant-Jitendra and have assaulted with the firearm, specific role of causing firearm injury to injured-Neetu has been assigned to the applicant and the other persons have also received firearm injury. In the first information report two persons being Kuldeep and Gaurav have also been shown as the eye-witnesses to the alleged incident.

4. Learned counsel has drawn attention of the Court to the injury report of Neetu in which a firearm injury on the right thigh has been found where blackening and tattooing is present. Learned counsel has further drawn attention of the Court to the statement of the eye-witnesses Kuldeep and Gaurav, who have stated that meeting with regard to election was being held at the house of Ravindra @ Doctor at 6:00 pm when the dispute has arisen between Ravindra @ Doctor and Jaivendra @ Leader and both the

sides have assaulted each other. On hearing the news, applicant along with co-accused Sonu have come to the place of occurrence and thereafter, have fired, as a result of the same, one Neetu has suffered firearm injury.

5. Learned counsel for the applicant submits that as per statement of Kuldeep, applicant himself has fired on his leg, as a result of the same, he has suffered firearm injury. Learned counsel for the applicant has drawn attention of the Court to the injury report of the applicant, which is at page-61 of the paper-book, where the injured/applicant was medically examined by doctor K.P. Singh on 8th March 2023 at 7:05 pm, where two firearm injury have been found on the right leg. One is entry and second is exit wound on the right leg inner side and injury no. 3 caused by hard and blunt object.

6. Learned counsel for the applicant further submitted that the manner in which the incident has taken place, there is contradiction in the statement of two eye witnesses Kuldeep and Gaurav, as well as, injured-Neetu and informant Jitendra. Neetu and Jitendra have stated that the place of incident is the house of the informant, whereas, as per eye-witness Kuldeep and Gaurav a meeting was being taken place at the house of Ravindra @ Doctor. As per injured and informant, the nominated accused persons have entered the house of the informant and thereafter have fired, whereas, as per two eye-witnesses Kuldeep and Gaurav accused persons have fired at the house of Ravindra @ Doctor.

7. In the present case, the prosecution has failed to explain the injury caused to the applicant, as well as, co-accused Jaivendra. As per medical report of Jaivendra which is at page-59 of the paper-book, he sustained 10 injuries, which have been caused by hard and blunt object. Learned counsel for the applicant submits that it is for the prosecution to explain, as to how, Jaivendra has received injuries. It is further submitted that a cross case was lodged against the informant and his family members under Section 156(3) Cr.P.C. where an FIR was lodged which is at page-51 of the paper-book being FIR under Section 147, 148, 149, 307, 323, 324, 325, 504 and 506 IPC. In the aforesaid FIR, the version raised by the applicant is to the effect that family members of the informant has fired, as a result of the same, the applicant has suffered firearm injury. Learned counsel for the applicant fairly submitted that after investigation a closure report has been submitted in respect of the FIR lodged from the side of the applicant and that was accepted by the court below against which a criminal revision is filed before this Court, which is pending consideration. The manner in which

the incident has taken place has not been truly and fairly disclosed by the informant and the prosecution. It is highly improbable that the applicant will cause firearm injury on the inner thigh of the leg. Injury caused to the injured Neetu was not on the vital part or on the thigh and there is no medical evidence that the injuries are life threatening. It is submitted that the dispute has arisen at the meeting where both the sides have suffered injuries and cross case has been lodged. The applicant is entitled to be given the benefit of doubt. The criminal history of the applicant has been explained in paras-3 to 6 of the supplementary affidavit. Applicant is languishing in jail since 24.03.2023 and in case he is released on bail, he will not misuse the liberty of bail and will cooperate in the trial.

8. Learned counsel for the informant, Sri Rohan Gupta assisted by Sri Ram Krishna Yadav, advocate has opposed the bail application and submits that the role assigned to the applicant is of causing firearm injury to injured-Neetu. In the first information report lodged from the side of the applicant investigation has been completed and after investigation closure report has been submitted and the Investigating Officer has come to the conclusion that the applicant himself has caused the firearm injury on his inner thigh in order to save himself from the alleged incident. Learned counsel for the informant submits that the contradiction pointed out by learned counsel for the applicant between the place of incident and the manner in which the incident has taken place is not relevant at this stage.

9. Learned counsel for the informant submits that informant Jitendra and Ravindra @ Doctor are brothers and their house are same. The applicant has three criminal history although has been explained in the supplementary affidavit. Learned counsel for the informant could not dispute the fact that the applicant was medically examined on 8th March 2023 at 7:05 p.m.

10. Learned A.G.A. for the State opposed the prayer for bail and submits that the injured has suffered one firearm injury. Applicant and nominated accused persons have entered the house of the informant and thereafter fired as a result of the same, the firearm injury has been received. However, he does not dispute the fact that applicant was medically examined on 8th March 2023 at 7:05 p.m. when as per prosecution case the incident took place at 07:30 p.m. on the same day.

11. Learned AGA for the State has pointed out the criminal antecedents of the applicant. No material or circumstance has been

brought to the notice of this Court with regard to tampering of evidence or intimidating of witness in previous criminal cases. In **Ash Mohammad Vs. Shiv Raj Singh, (2012) 9 SCC 446**, the Apex Court in para 30 has observed:-

"We may hasten to add that when we state that the accused is a history-sheeter we may not be understood to have said that a history-sheeter is never entitled to bail. But, it is a significant factor to be taken note of regard being had to the nature of crime in respect of which he has been booked."

12. In the case of **Prabhakar Tewari Vs. State of U.P. and another, 2020 (11) SCC 648**, the Hon'ble Supreme Court has observed that pendency of several criminal cases against an accused may itself cannot be a basis for refusal of bail.

13. In so far as criminal antecedents of the applicant is concerned, it is not the case of the State that applicant might tamper with or otherwise adversely influence the investigation, or that he might intimidate witnesses before or during the trial. The State has also not placed any material that applicant in past attempted to evade the process of law. If the accused is otherwise found to be entitled to bail, he cannot be denied bail only on the ground of criminal history, no exceptional circumstances on the basis of criminal antecedents have been shown to deny bail to accused, hence, the Court does not feel it proper to deny bail to the applicant just on the ground that he had criminal antecedent.

14. The principle that Bail is a rule and Jail is an exception has been well recognised by Apex Court more specifically on the touch stone of Article 21 of the Constitution. The said principle has been reiterated by the Apex Court in **Satyendra Kumar Antil Vs. Central Bureau of Investigation and another, 2022 (10) SCC 51**. Learned AGA for the State has not shown any exceptional circumstances which would warrant denial of bail to the applicant.

15. No material, facts or circumstances has been shown by learned AGA for the State that the accused may tamper with the evidence or witnesses or the accused is of such character that his mere presence at large would intimidate the witnesses or that accused will use his liberty to subvert justice or tamper with the evidence.

16. It is settled principle of law that the object of bail is to secure the attendance of the accused at the trial. No material particulars or circumstances suggestive of the applicant fleeing from justice or thwarting the course of justice or creating other troubles in the

shape of repeating offences or intimidating witnesses and the like have been shown by learned AGA for the State.

17. Learned AGA for the State has not shown any material or circumstances that the accused/applicant is not entitled to bail in larger interests of the public or State.

18. It is to be seen in the present case that initially the first information report was lodged by one Jitendra on 8th March 2023 at 2355 hours in respect of an occurrence which has taken place on 8th March 2023 at 1930 hours. Allegations in the first information report is to the effect that when the informant-Jitendra was at his home, the nominated accused persons have entered into the house of the informant and have fired and the specific role of firing causing firearm injury to injured Neetu has been assigned to the applicant. Injured Neetu was medically examined and her injury report is at page 29 of the paper book where on the right thigh one firearm injury has been received. There are contradictions in the statement and the manner in which place of the incident. The eye witnesses to the instant incident i.e. Kuldeep and Gaurav, (whose names have been disclosed in the first information report itself) have disclosed that meeting with regard to election was being held on 8th March 2023 at the house of Ravindra @ Doctor where a dispute arose between both the parties. On hearing news the applicant came and fired, as a result of the same, injured Neetu has received firearm injury. Injuries sustained by Neetu is not on the vital part of the body. The aforesaid statement of two witnesses is in-contradiction to the statement of injured Neetu and informant has disclosed that incident has taken place at house of the informant Jitendra.

19. It is further to be seen that as per the counsel for the informant Jitendra and Ravindra are brothers and their houses are the same. However, in this respect nothing has been shown before this Court. Neither in the statement of aforesaid witnesses anything has been shown that the house of informant and Ravindra are common.

20. It is further to be noted that applicant was medically examined on 8th March 2023 at 7:05 p.m. whereas as per FIR, the incident has taken place at 07:30 p.m. Learned AGA and learned counsel for the informant has not explained as to how prior to the alleged incident, the injured has been examined by the same doctor, who has examined injury of the side of the informant and the aforesaid fact is indicative that true story of the incident has not been disclosed by the prosecution. It is the duty of the prosecution to bring the correct facts on record during investigation and to

explain as to how the accused has suffered injury. The only explanation offered by the prosecution is to the effect that the applicant himself has caused firearm injury, which dispute is pending consideration in criminal revision before this Court.

21. As per prosecution case, the injury suffered by applicant were self inflicted by applicant in order to create defence to the alleged occurrence taken place at 07.30 pm. The opposite side has not been able to explain as to how applicant has been examined at 7:05 p.m. on 8th March 2023, when the incident as per first information report occurs at 7:30 p.m. and when as per opposite party injury of applicant was sustained by himself after the incident.

22. It is further to be noted that injured-Neetu was medically examined at 10:40 p.m. on 8th March 2023 even though the applicant was medically examined at 7:05 p.m. No explanation has been offered by opposite party in this respect.

23. The prosecution has failed to explain the suspicious circumstances surrounding the investigation.

24. Be that as it may, once the prosecution has not explained as to how the applicant has received firearm injury and when he was medically examined at 07:05 p.m. on 8th March 2023 and as per the FIR, the incident has taken place at 07:30 hours then benefit of doubt goes to the applicant at this stage and the applicant is entitled to be released on bail.

25. Considering the facts and circumstances of the case, nature of offence, evidence, complicity of the accused, submissions of learned counsel for the parties 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.

26. Let the applicant **Ajay @ Bittu** involved in Case Crime No. 152 of 2023, under Sections 307, 323, 324, 325, 452, 504/34, 506 IPC and Section 3/25 Arms Act, Police Station Chandpur, District Bijnor, be released on bail on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to the following conditions:-

- i. The applicant will not tamper with the evidence during the trial.
- ii. The applicant will not pressurize/intimidate the prosecution witness.

iii. The applicant will appear before the trial court on the date fixed, unless personal presence is exempted and/or the applicant shall make himself available for interrogation by a police officer as and when required.

iv. The applicant shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.

v. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

vi. The applicant shall not leave India without the previous permission of the Court.

vii. In the event, the applicant changes residential address, the applicant shall inform the court concerned about new residential address in writing.

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

28. Any observation made in the present is for the purpose of deciding the present bail application and the trial court shall decide the trial proceedings independently without being influenced by any observation made in the present order.

Order Date :- 2.12.2023

S.Prakash