

Court No. - 72

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 40280 of 2023

Applicant :- Banti @ Javed

Opposite Party :- State of U.P.

Counsel for Applicant :- Prabhat Kumar Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. List has been revised.
2. Heard Sri Prabhat Kumar Pandey, learned counsel for applicant and Sri Deepak Kumar Singh, learned A.G.A. for the State.
3. This is the second bail application on behalf of the applicant. The first one was rejected by this Court vide order dated 15.3.2023 on account of non appearance of the counsel for the applicant.
4. The present bail application has been filed by the applicant in Case Crime No.429 of 2017, under Section 302 IPC, Police Station Ganjdundwara, District Kasganj with the prayer to enlarge him on bail.
4. As per prosecution story, on the exhortation of the applicant, all the accused persons are stated to have come to the shop of the deceased and thereby the applicant is stated to have fired at Danish who fell down. The applicant and other co-accused persons fled away on motorcycle by firing in air on 24.12.2017 at about 5:10 p.m.
5. Learned counsel for the applicant has stated that he has been falsely implicated in the present case. The FIR is delayed by about 12 hours and there is no explanation of the said delay caused. The two co-accused persons, namely, Faizan Akhtar and Shan Mohammad, have been enlarged on bail by Co-ordinate Bench of this Court vide orders dated 6.6.2018 and 19.7.2018 passed in Criminal Misc. Bail Application No.21099 of 2018. Learned counsel has further stated that the case of the applicant is at par with the co-accused persons. In all, three witnesses of fact have been examined and there is no likelihood of early conclusion of trial. There is no likelihood of the applicant

tampering with evidence. The applicant is in jail since 26.12.2017.

6. Per contra, learned A.G.A. has vehemently opposed the bail application on the ground that the role of the applicant has been distinguished to the co-accused persons as they had not fired at the deceased person. The applicant is the main accused person, as such he cannot be enlarged on bail.

7. After hearing learned counsel for the parties and taking into consideration the fact that the applicant is the main accused person and it was he who had fired at the deceased person causing his death in hospital, I do not find it a fit case for grant of bail to the applicant.

8. The bail application is found devoid of merits and is, accordingly, **rejected**.

9. However, it is directed that the aforesaid case pending before the trial court be decided expeditiously as early as possible in view of the principle as has been laid down in the recent judgments of the Apex Court in the cases of ***Vinod Kumar vs. State of Punjab; 2015 (3) SCC 220*** and ***Hussain and Another vs. Union of India; (2017) 5 SCC 702***, if there is no legal impediment.

10. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial.

Order Date :- 18.10.2023

Ravi Kant

(Krishan Pahal, J.)