

Court No. - 76

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48523 of 2022

Applicant :- Siddhrath Singh @ Ankur Singh

Opposite Party :- State of U.P.

Counsel for Applicant :- Laxmi Kant Shukla, Arun Kumar Tripathi

Counsel for Opposite Party :- G.A., Satya Priya Mishra

Hon'ble Vikram D. Chauhan, J.

1. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.
2. In compliance of the order dated 18.10.2023, a report has been submitted by the Registrar General of this Court on 10.11.2023 initiating action.
3. The present bail application has been preferred with the prayer to release the applicant on bail in Case Crime No.453 of 2022, under Sections 307, 323, 504, 506, 352, 34 I.P.C., Police Station Pipraich, District Gorakhpur.
4. It is submitted by learned counsel for the applicant that the first information report was lodged on 20.8.2022 at about 22.09 hours in respect of an incident which is alleged to have taken place on 20.8.2023 at about 14.30 hours. As per the prosecution case it is alleged that the applicant along with the co-accused visited the house of the informant where a dispute has arisen. The accused persons have threatened the informant and thereafter, the applicant has fired with firearm, as a result of the same, Pradeep Yadav and Ritu Yadav have sustained firearm injuries. As per the first information report, the applicant was apprehended from the spot by the villagers and the villagers have beaten the applicant. The police force reached the place of occurrence and thereafter, the applicant was handed over to the police. Once the applicant was apprehended from the spot, then the pistol and the cartridges ought to have been recovered at the same time. However, as per the recovery memo, the cartridges have been recovered subsequently, which is of 7.65 MM bore.
5. It is further submitted by learned counsel for the applicant that

the applicant has been falsely implicated in the present case. The manner in which the incident has taken place is not correct. A first information report was lodged by father of the applicant on 29.11.2022, which is at page 97 of the paper book in respect of the incident taken place on 20.8.2023. The aforesaid first information report was lodged under the provisions of Section 156(3) Cr.P.C. As per the first information report lodged by the side of the applicant, the injured Pradeep Yadav and Ritu Yadav were made accused and the allegations were to the effect that when the applicant went to the house of the present informant where a dispute arose and the accused persons Pradeep Yadav and Ritu Yadav, Ajit, Anoop, Shailendra and others have assaulted the applicant, as a result of the same, the applicant sustained injuries.

6. Learned counsel for the applicant has drawn attention of this Court to the injury report of the applicant which is at page 60 of the paper book to submit that the applicant has sustained injury on the head. The injuries have been caused by hard and blunt object. There was a dispute with regard to loan given by the applicant to the present informant for which the applicant went to the house of the informant for recovery of the loan amount where a dispute has arisen and some third party has fired on the injured Pradeep Yadav and Ritu Yadav in the currency of the articulation between both the sides. In the first information report lodged by the father of the applicant, after investigation charge sheet has been submitted, although the Pradeep Yadav and Ritu Yadav has been exonerated during investigation. The applicant has no criminal history. The applicant is languishing in jail since 25.8.2022 and in case he is released on bail, he will not misuse the liberty of bail and will cooperate in the trial.

7. Sri Satya Priya Mishra, learned counsel for the informant opposed the prayer for bail and submits that there are three eye-witnesses of the alleged incident being Ajit, Anoop and Shailendra. The presence of the aforesaid witnesses is not in dispute as the first information report lodged from the applicant's side the name of the aforesaid witnesses finds place. The injured have sustained firearm injury in the abdomen. The firearm injury itself is indicative of the intention of the applicant and offence under Section 307 I.P.C. is made out against the applicant.

8. Learned A.G.A. for the State opposed the prayer for bail and submits that there is recovery of cartridge and firearm from the place of occurrence. There are eye-witnesses to the alleged incident and there is a dispute between both the parties. The applicant has fired, as a result of the same, Pradeep Yadav and Ritu

Yadav have sustained firearm injury. Both the injured have sustained injuries in the abdomen.

9. In the present case, it is to be seen that the prosecution case rest upon the fact that the applicant along with the other accused persons have reached the house of the informant where a dispute has arisen and as a result of the same, the applicant has fired and injured Pradeep Yadav and Ritu Yadav. The injury report of the aforesaid injured would demonstrate that both have sustained firearm injury in the abdomen.

10. It is to be noted that the applicant's side has lodged the first information report in respect of the aforesaid incident where it is alleged that the villagers have beaten the applicant, as a result of the same, the applicant suffered injury. The injuries suffered by the applicant is at page 6, which injuries are caused by hard and blunt object.

11. Under the offence under Section 307 I.P.C. it is to be seen that whether the accused persons have intention to commit culpable homicide. The defence available to the accused is the exceptions available under Section 300 I.P.C.

12. The applicant went for demand of loan amount where the dispute has arisen and as a result of the same, both sides have suffered injuries. It is not in dispute that both the sides have suffered injuries. However, the injured Pradeep Yadav and Ritu Yadav has suffered firearm injuries in the abdomen, which a vital part.

13. In the present case the injured suffered firearm injury in the abdomen which is a vital part. There are eye-witnesses to the alleged incident as per the prosecution. The injured witnesses have also supported the prosecution case. As per the applicant, the applicant went to the house of the informant for collection of the loan amount whereof dispute has arisen. The applicant was caught at the spot of the incident. The carrying of firearm weapon for recovery of the loan amount is indicative of the intention of the applicant to commit culpable homicide coupled with firearm injury sustained by the injured. Two persons have suffered firearm injury in the alleged incident from the side of the informant. The injury sustained by the applicant are caused by hard and blunt object for which the prosecution has given an explanation that the aforesaid injuries have been sustained on account of the applicant being caught on the spot by the villagers. Even otherwise, in the case of sudden fight the party who has taken undue advantage or acted in a

cruel and unusual manner is not entitled to the benefit of an exception under Section 300 of the Indian Penal Code. In the present case, the applicant was carrying firearm to the place of occurrence and has fired. The applicant has taken undue advantage by resorting to firing for recovery of the loan amount and have acted in an unusual manner as such the present bail application lacks merit.

14. Considering the facts and circumstances of the case, the bail application lacks merit and is accordingly rejected.

Order Date :- 16.11.2023

Bhaskar