

Neutral Citation No. - 2023:AHC:210867

Reserved On:- 30.10.2023

Delivered On:- 02.11.2023

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41040 of 2023

Applicant :- Dileep Singh

Opposite Party :- State of U.P.

Counsel for Applicant :- Karunesh Pratap Singh, Anand Vibhor Singh

Counsel for Opposite Party :- G.A., Prashant Kumar Tripathi

Hon'ble Siddharth, J.

1. Heard Shri V.P. Srivastava, learned Senior Counsel assisted by Shri Karunesh Pratap Singh, learned counsel for the applicant; Shri Prashant Kumar Tripathi, learned counsel for the informant and learned A.G.A.
2. There is allegation in the FIR against two unknown accused persons that while the father of the informant aged about 63 years was sleeping in his house someone threw chilly powder in his eyes and murdered him by firing by fire arm. When his father cried for help the informant came. Both the accused persons ran away after causing fire arm injury to his father.
3. Learned Senior Counsel for the applicant submits that it is a case of false implication of the applicant. He has also submitted that soon after the alleged incident the applicant came on the spot and took the deceased to the hospital in his vehicle. The applicant is friend of the deceased. He has retired from Army and is having his own family and running a public school. The deceased used to come to school of the applicant and there was no enmity between them. Before his death and in the way to hospital the deceased stated that he knows the person who has caused the alleged offence but he did not disclosed the name of anyone. On the basis of

information given by the informant the applicant has been arrested and on his pointing out a pistol was recovered which has nothing to do with the present offence. Had he committed the alleged crime he would never have come to take the deceased in his vehicle soon after the incident on the calling of the informant. The daughter-in-law of the deceased stated that the father-in-law informed her that he knows the persons who has caused the fire arm injury to him but because of pain he could not disclose his name.

4. Learned Senior Counsel for the applicant has also submitted that it is a case of blind murder by unknown accused. The police has implicated the applicant falsely only to workout the case. There is no motive for the applicant to commit the alleged offence. The applicant is an ex-service man. He is in jail since 01.06.2023 and has no criminal history to his credit.

5. Learned counsel for the informant has vehemently opposed the bail application and has submitted that till the F.S.L report is received regarding the fire arm recovered from applicant may not be enlarged on bail.

6. Learned A.G.A has also opposed the prayer for bail.

7. 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.

8. Let the applicant, Dileep Singh, involved in Case Crime No. 231 of 2023, under Sections- 302 IPC and Section 27/30 of Arms Act, Police Station- Gola, District- Gorakhpur, 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 :- 02.11.2023

Rohit