

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41284 of 2023

Applicant :- Sarnam

Opposite Party :- State Of Up Thro Principal Secretary Gov Of Up At Lucknow

Counsel for Applicant :- Ajendra Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma,J.

2. Heard learned counsel for the applicant and learned AGA for the State-respondent.

3. The instant bail application under Section 439 Cr.P.C. has been filed with a prayer to enlarge the applicant on bail in Case Crime No. 533 of 2021, under Sections 323, 427, 447, 504, 506, 326 IPC, Police Station Jaithra, District Etah, during the pendency of trial.

4. Counsel for the applicant submits that the applicant has been falsely implicated in the instant case. The incident is alleged to have occurred on 13.11.2021 and the first information report was lodged on 21.11.2021. The delay in the facts of the present case is fatal to the prosecution case. As per the allegations in the FIR, the applicant alongwith another co-accused are alleged to have assaulted two persons; namely the informant and Ramwati. The medical report of Ramwati is not available in the case diary. As per the medical report of the informant, he received three injuries. The injury no. 1 and 3 was found simple in nature, whereas the injury no.2 on his left eye was found to be grievous. The statement of the first informant was recorded on 10.12.2021. In the said statement, general role of assault has been assigned to the applicant. Thereafter, the second statement of the informant was recorded on 01.08.2023. In the said statement, the applicant was nominated as the offender, who caused the injury no.2. It is contended that the said statement is an after thought and discredits the prosecution case. The applicant is in jail since 08.08.2023 having no criminal history and in case he is enlarged on bail, he will not misuse the said liberty.

5. Learned AGA has opposed the prayer for bail but could not satisfactorily dispute the aforesaid submissions from the record.

6. Having heard counsel for the parties and having perused the record, this Court prima facie finds that the first information report was lodged belatedly further the second statement of the

informant dated 01.08.2023 appears to be an after thought and cannot be relied upon at this stage. In the earlier statement of the informant, the applicant was not nominated as the principal offender, who caused the injury no.2. At present there is no clarity with regard to the role of the applicant. Further, the applicant has remained confined for more than two months and after submission of the charge-sheet there is no hope of early conclusion of trial, more so when no reasonable apprehension has been brought to the fore by the State that the applicant, if enlarged on bail, would either tamper with the evidence or delay the trial or intimidate the witness, without commenting on the merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

7. Let the applicant **Sarnam**, involved in the aforesaid case 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 the conditions that he:

(i) shall appear on the date fixed by the trial court;

(ii) shall not tamper with the prosecution evidence; and,

(iii) shall not pressurize the prosecution witnesses.

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

Order Date :- 31.10.2023

Lbm/-