

Court No. - 75

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41637 of 2023

Applicant :- Shahnazar

Opposite Party :- State of U.P.

Counsel for Applicant :- Gaurav Kakkar

Counsel for Opposite Party :- G.A.

Hon'ble Umesh Chandra Sharma, J.

1. Sri Abhinav Singh, Advocate, has filed his *Vakalatnama*, on behalf of first informant/respondent no. 2, today in Court, which is taken on record.
2. Learned counsel for the applicant has filed supplementary affidavit, which is also taken on record.
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. 293 of 2023, under Sections 147, 148, 323, 325, 352, 336, 308, 504, 506 I.P.C, Police Station Nakud, District Saharanpur, during the pendency of trial.
4. Counsel for the applicant submitted that the informant has falsely implicated the entire family of the applicant in the instant case. The applicant has no criminal history in his credit.
5. From perusal of the record it transpires that it is a cross matter between the parties, in which both the sides have received injuries. In this case the F.I.R was lodged by Tahir on 05.08.2023 for the offence caused on 31.07.2023 by the accused Gayyoor, Margoob, Shah-nazar, Azim @ Azimuddin, Kasim, Abuzar and Nauman. It is alleged in the F.I.R and the Statements recorded under Section 161 Cr.P.C that Shah-nazar was having an axe in his hand and he used the same in commission of the crime. In this regard the injury report of the injured Sufiyan, Tahir, Kamil, Chand Miyan and Faizan has been seen by this Court. None of these injured has seen incised wound, therefore, the contention of the learned counsel is that no injury has been caused by the alleged axe. The injuries would have been occurred by hart and blunt object and according to the prosecution Margoob has *Lathi* in his hand and Azim @ Azimuddin and Kasim and Azgar were having iron rod, hockey and stick. According to prosecution Noman had also participated with axe.

6. The F.I.R has been lodged by Azam, S/o Gayum for the offence committed on the same day, time and place of occurrence on 06.08.2023, stating that the informant side have caused serious injuries to the injured accused persons Kasim @ Azimuddin, Kasim, Abuzar and Nauman, thus it comes out that it is a cross case and according to learned counsel for the applicant it is a case of free fight in which both the parties have sustained injuries and both the parties have blamed to each other. Generally in cross case bail application should be allowed of both the parties. The applicant is languishing in jail 06.08.2023. In case, he is enlarged on bail, he will not misuse the said liberty.

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

8. Having regard to the submissions made but without commenting on merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

9. Let the applicant- **Shahnazar**, involved in the aforesaid case crime 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;

(iii) shall not pressurize the prosecution witnesses.

10. 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 :- 19.10.2023

Vinod.