

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42543 of 2023

Applicant :- Ashutosh Bhaduriya @ Shambhu Thakur

Opposite Party :- State of U.P.

Counsel for Applicant :- Raj Narayan Gupta

Counsel for Opposite Party :- G.A.,Shivam Yadav

Hon'ble Samit Gopal,J.

1. List revised.
2. Heard Sri Raj Narayan Gupta, learned counsel for the applicant, Sri Shivam Yadav, learned counsel for the first informant and Sri Vinay Kumar Pandey, learned counsel for the State and perused the material on record.
3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant Ashutosh Bhaduriya @ Shambhu Thakur, seeking enlargement on bail during trial in connection with Case Crime No. 202 of 2023, under Sections 147, 148, 149, 302, 34 I.P.C., registered at Police Station Friends Colony, District Etawah.
4. On 06.10.2023 a cost of Rs. 1,000/- was imposed on the counsel for the first informant. Sri Shivam Yadav, learned counsel for the first informant has produced receiving before the Court of the High Court Legal Services Committee, Allahabad dated 16.10.2023 regarding receipt of Rs. 1,000/- through bank draft.
5. The FIR of the matter was lodged on 18.07.2023 against the applicant and four other persons by Ram Naresh alleging therein that the accused persons assembling together and firing upon the deceased Shivam.
6. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that the role of causing fatal injury on the neck of the deceased Shivam Yadav has been assigned to co-accused Vinay Yadav. It is argued that no specific role has been assigned to the applicant. It is further argued while placing para 12 of the affidavit that after arrest of the applicant he has been involved in two other cases but there is no

previous criminal history. It is further argued that co-accused Rohan Chauhan has been granted bail by a co-ordinate Bench of this Court vide order dated 18.09.2023 passed in CrI. Misc. Bail Application No. 36983 of 2023 (Rohan Chauhan Vs. State of U.P.), copy of the order is annexed as annxure 5 of the affidavit. The applicant is in jail since 21.07.2023.

7. Per contra, learned counsel for the first informant and learned counsel for the State opposed the prayer for bail and argued that in the CCTV footage of the place of occurrence where the accused persons were seen to have stopped the deceased and engaging him to talk after which Vinay Yadav fired upon the deceased. It is argued that the applicant was present with the other co-accused persons and stopped the deceased to engage him to talk but could not dispute the fact that co-accused Raohan Chauhan has been granted bail.

8. After having heard learned counsels for the parties and perusing the records, it is evident that common and general role has been assigned to the applicant and other accused persons in the FIR. Eye witness Suhail has been assigned the specific role of firing on the neck of the deceased to co-accused Vinay Yadav. Co-accused Rohan Chauhan has been granted bail.

9. The case of the applicant is distinguishable with that of co-accused Vinay Yadav.

10. Looking to the facts and circumstances of this case, the nature of evidence and also the absence of any convincing material to indicate the possibility of tampering with the evidence, this Court is of the view that the applicant may be enlarged on bail.

11. Let the applicant **Ashutosh Bhaduriya @ Shambhu Thakur**, be released on bail in the aforesaid case crime number on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice:-

i) The applicant will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

ii) The applicant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the date 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.

(iv) The applicant will not misuse the liberty of bail in any manner whatsoever. 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., may be issued and if 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 I.P.C.

(v) The applicant shall remain present, in person, before the trial court on dates fixed for (1) opening of the case, (2) framing of charge and (3) 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 and the trial court may proceed against him under Section 229-A IPC.

(vi) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicant.

12. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail and send the applicant to prison.

13. The bail application is ***allowed***.

Order Date :- 19.10.2023

M. ARIF

(Samit Gopal, J.)