

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42647 of 2023

Applicant :- Toni Tiwari @ Chhotu Tiwari

Opposite Party :- State of U.P.

Counsel for Applicant :- Devottam Pandey

Counsel for Opposite Party :- G.A.,Ashutosh Singh,Lallan Prasad Singh

Hon'ble Vivek Varma,J.

1. Supplementary affidavit filed by the counsel for the applicant, is taken on record.
2. Heard learned counsel for the applicant, Sri Ashutosh Singh, learned counsel for the informant 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 No. 51 of 2019 arising out of Case Crime No. 486 of 2016, under Section 307 IPC, Police Station Bairia, District Ballia, during the pendency of trial.
4. Counsel for the applicant submits that the applicant was not named in the first information report and has been falsely implicated in the instant case. In the alleged incident, Govind Singh has received injury. In the statement of the injured Govind, the co-accused Anoop Singh is alleged to have caused the fire arm injury. The applicant has not been nominated as the offender, who caused the fire arm injury to the injured Govind. The co-accused Anoop Singh, has been granted bail by this Court in Criminal Misc. Bail Application No. 38990 of 2019 vide order dated 24.09.2019. The criminal history of the applicant has been explained in para 4 of the supplementary affidavit. The applicant is in jail since 29.08.2023 and in case he is enlarged on bail, he will not misuse the said liberty.
5. Learned AGA and learned counsel for the informant have 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 applicant was not named in the first information report. The applicant has not been nominated as the offender, who caused the fire arm injury. Further, the applicant has remained confined for more than a month 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 **Toni Tiwari @ Chhotu Tiwari**, 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 :- 13.10.2023

Lbm/-