

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43413 of 2023

Applicant :- Subhash Chandra

Opposite Party :- State of U.P.

Counsel for Applicant :- Raghuvarsh Misra,Ratnakar Chaudhary

Counsel for Opposite Party :- G.A.,Rahul Mishra

Hon'ble Vivek Varma,J.

1. Heard counsel for the applicant, counsel for the informant and learned A.G.A. for the State-opposite party.
2. The instant bail application under Section 439 Cr.P.C. has been filed with the prayer to enlarge the applicant on bail in Case Crime No. 372 of 2023 under Section 307 of I.P.C., Police Station- Bhogaon, District- Mainpuri, during the pendency of the trial.
3. Prosecution story in brief states that Sri Sheeshram and Ranjeet were going on a motorcycle. At about 1:00 PM, two persons on a motorcycle came and they fired at Sheeshram. The injured was taken to Community Health Centre, Bhongaon, District- Mainpuri and, thereafter, to higher centre for treatment. The injured was treated at Malhotra Hospital, Agra. The condition of injured was not good and he was unconscious. It was also stated in the first information report that the injured would disclose the names of the accused when he regains consciousness.
4. Counsel for the applicant contends that the incident is alleged to have occurred at 1300 Hours on 30.05.2023. The injured was taken to the Community Health Centre, Bhongaon, District- Mainpuri at 01:05 PM. At the time of medical examination, the Doctor recorded that the injured was conscious/oriented. The patient himself informed the Doctor about gunshot injury. The medical examination was completed at 1:45 PM. The injured was again examined on the same day at 05:25 PM at Malhotra Hospital, Agra. According to the medical report prepared at Malhotra Hospital, Agra, the patient was conscious and responding to vocal commands. Thereafter, the first information report was lodged on 30.05.2023 at 2207 hours. In the first information report, the applicant was not named. The statement of the first informant was recorded on 04.06.2023. In the said statement, the name of the applicant was also not disclosed. The informant stated that the injured was not in a position to speak and would subsequently disclose the names of the accused persons. However, in the said statement, the informant stated that the injured informed him about the incident immediately. The statement of the injured was recorded on 05.06.2023. In the said statement, the injured for the first time disclosed that the applicant had fired at him. He had

recognized the applicant at the spot and had informed the SHO, Bhongaon as well as his brother (informant). Subsequently, on 29.06.2023, the statement of the alleged eyewitness was recorded. In the said statement, the alleged eyewitness also stated that he had recognized the applicant who had caused firearm injury upon the injured Sheeshram. Counsel for the applicant contends that the statements of the injured and the eyewitness recorded subsequently are an afterthought and unreliable. Further, the statement of the informant and the injured are contrary to each other. The injured and the informant are acquainted to each other and as such there was no reason to disclose the name of the applicant to the informant at the first instance. Although, the informant in his statement has stated that the injured has himself informed him about the incident. It is next contended that as per the medical report, the injured at the time of the medical examinations was conscious/oriented and as such non-disclosure of the name of the applicant at the initial stage also discredits the prosecution case. It is further contended that the applicant has been falsely implicated as he had filed an election petition against the injured, Sheeshram under Section 12(c) of the U.P. Panchayati Raj Act in the Court of Sub Divisional Magistrate, Tehsil- Bhongaon (Mainpuri) which is still pending consideration. The instant prosecution has been instituted only to harass the applicant and to settle personal scores. The applicant is in jail since 19.07.2023, having no criminal history. In case he is enlarged on bail, he will not misuse the said liberty.

5. Learned A.G.A. and 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 at the time of medical examinations, the applicant was conscious/oriented. The disclosure of the name of the applicant at a later stage discredits the prosecution case. There are contradictions in the statements of the first informant and the injured. At this stage, there is no clarity with regard to the role of the applicant. Further, the applicant has no criminal antecedents and has remained confined for more than three 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 merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

7. Let the applicant- **Subhash Chandra**, involved in 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;
- (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 :- 30.10.2023/Sachin Mishra