

**Court No. - 70**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 43687 of 2023

**Applicant :-** Dalveer

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Sher Bahadur Yadav

**Counsel for Opposite Party :-** G.A.

**Hon'ble Sameer Jain,J.**

1. Heard Sri Sher Bahadur Yadav, learned counsel for the applicant and Sri Amarnath Vishwakarma, learned Brief Holder for the State-respondent.
2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 71 of 2023, under Sections 147, 148, 149, 307, 302, 323, 504 IPC and Section 7 Criminal Law Amendment Act, Police Station Jarif Nagar, District Budaun, during pendency of the trial in the court below.
3. FIR of the present case was lodged against the applicant and 14 others and according to the FIR on 22.2.2023, applicant and his associates at about 12:45 p.m. made assault and opened fire upon the informant side.
4. It is further mentioned in the FIR that co-accused Reshampal, Mallu, Amar Singh, Satyapal, Bhurran and Radhey Shyam opened indiscriminate firing and due to the firing made by them Jaiprakash, Satendra, Mahipal and Hariom sustained fire arm injuries.
5. It is further mentioned in the FIR that when informant and his brother Rohtash tried to escape then accused persons chased them and caused injuries to them through *lathi*, *danda* and *spear*.
6. It is further mentioned in the FIR that due to fire arm injury, Jaiprakash and Satendra died.
7. Learned counsel for the applicant submitted that totally on the basis of false allegation applicant has been made accused in the present matter alongwith 14 others and he never participated in the present crime.

8. He further submitted that actually informant side was the real aggressor and due to the firing opened by the informant side, from the side of applicant also one person died and two persons sustained injuries.

9. He further submitted that with regard to the same incident, from the side of the applicant also a FIR was lodged on 22.2.2023 at about 23-24 hours i.e. on same day within one and half hours from the lodgement of the FIR of the present case and therefore, admittedly there is a cross version.

10. He further submitted that in the FIR it is specifically stated that co-accused Reshampal, Mallu, Amar Singh, Satyapal, Bhurran and Radhey Shyam opened fire and in the statements recorded under section 161 Cr.P.C. all the witnesses including injured witnesses specifically stated that only these accused persons were having fire arms and remaining other accused persons including applicant were having *lathi-danda* and *spear* and due to the fire opened by co-accused Reshampal, Mallu, Amar Singh, Satyapal, Bhurran and Radhey Shyam, deceased sustained injuries and died.

11. He further submitted that although in the FIR, it is alleged that two persons died but subsequently one injured Hariom also succumbed to his fire arm injury and therefore, it is a case of triple murder but allegation of committing murder of all the three persons is not against the applicant.

12. He further submitted that on the general allegation of making assault upon informant and his brother Rohtash, applicant has been made accused alongwith the other remaining accused, who were allegedly armed with *lath-danda* and *spear*.

13. He further submitted that the injury sustained by the informant and his brother Rohtash were not dangerous to life and all the accused persons, who were made accused in the FIR lodged by the applicant side, have already been enlarged on bail by this Court.

14. He further submitted that bail applications of co-accused Pappu and Naresh have already been allowed by this Court and case of applicant is at par with them.

15. He further submitted that although, apart from the present case, applicant is also having criminal history of one case of Gangsters Act to his credit but criminal history of applicant has been explained in the instant bail applicant and he is in jail since 24.02.2023.

16. Per contra, learned AGA opposed the prayer for bail and submitted that it is a case of triple murder and three persons sustained injuries but could not dispute the fact that there is a cross version and from the side of applicant also one person lost his life and two persons sustained injuries.

17. Learned AGA further could not dispute the fact that role of firing upon all the deceased have been assigned to co-accused Reshampal, Mallu, Amar Singh, Satyapal, Bhurran and Radhey Shyam and there is no allegation that applicant also opened fire.

18. Learned AGA further could not dispute the fact that bail applications of co-accused Pappu and Naresh have already been allowed by this Court and case of applicant is at par with them.

19. However, Learned AGA further pointed out that apart from the present case and case under the provisions of Gangsters Act, applicant is also having criminal history of two other cases but he fairly conceded that remaining both the cases were of minor nature of Sections 323 and 325 IPC.

20. I have heard learned counsel for the parties and perused the record of the case.

21. From the perusal of the record, it appears that in the present matter, three persons lost their lives and three persons sustained injuries but from the record, it further reflects that from the side of the applicant also one person died and two persons sustained injuries and from the side of the applicant also, FIR was lodged on same day with regard to the same incident, therefore, there is a cross version.

22. Further, from the FIR and from the statements of the eye witnesses including injured witnesses it appears that role of causing fire arm injuries to all the deceased have been assigned to the co-accused Reshampal, Mallu, Amar Singh, Satyapal, Bhurran and Radhey Shyam and there is no allegation against the applicant that he either opened fire or caused any injury to any of the deceased.

23. Further, from the record it reflects that on the basis of general allegation of causing injury to informant and his brother Rohtash, applicant has been made accused alongwith other remaining accused persons who were not having firearm but from perusal of the injury report of the informant and his brother, it appears that they did not sustain any injury which was dangerous to life.

24. Further, bail application of all the accused persons of the cross FIR, have already been allowed by this Court.

25. Further, bail applications of co-accused Pappu and Naresh have already been allowed by this Court and case of applicant is at par with them.

26. Therefore, considering the facts and circumstances of the case, discussed above, in my view, applicant is entitled to be released on bail.

27. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is **allowed**.

28. Let the applicant- **Dalveer** be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicant shall appear before the trial court on the dates fixed, unless his personal presence is exempted.

(ii) The applicant shall not directly or indirectly, make inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or any police officer or tamper with the evidence.

(iii) The applicant shall not indulge in any criminal and anti-social activity.

29. In case of breach of any of the above condition, the prosecution will be at liberty to move an application before this Court for cancellation of the bail of the applicant.

30. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial.

**Order Date :- 13.10.2023**

KK Patel