

Court No. - 72

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45530 of 2023

Applicant :- Phoolchand Yadav

Opposite Party :- State of U.P.

Counsel for Applicant :- Dharendra Kumar Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. List has been revised.
2. Heard learned counsel for the applicant as well as Sri Ashutosh Srivastava, learned A.G.A. for the State and perused the material placed on record.
3. Applicant seeks bail in Case Crime No. 239 of 2023, U/S 323, 504, 326 IPC, Police Station Alinagar, District Chandauli, during the pendency of trial.
4. As per prosecution story, the applicant alongwith other co-accused persons, is stated to have assaulted the informant and her son Vikas on 11.8.2023 at about 2.30 pm, thereby causing injuries to him.
5. Learned counsel for the applicant has argued that the applicant is absolutely innocent and has been falsely implicated in the present case with a view to cause unnecessary harassment and to victimize him. He has further stated that the same day, an NCR No. 172 of 2023 under Sections 323, 504 IPC was instituted regarding the commissioning of the offence. The details of the occurrence were entered in the GD No. 49 dated 11.8.2023 at 13.23 hours, whereby it was mentioned that the applicant and other persons had assaulted with lathi and danda. It has been mentioned in it that the injured person had sustained injuries. It has not been mentioned in it of having severed the finger of the injured person Manju Devi. It is further stated that subsequently, the case was transferred as a cognizable offence and FIR No. 239 of 2023 was registered on 20.8.2023 at the behest of the medical report. Learned counsel has also stated that subsequent to the said institution of the FIR, the statement of the victim has been recorded by the investigating officer and he has introduced the new fact that the applicant went to his house and came out with a banka (spade) and assaulted with it. It is further stated that the said statement is delayed and has been made after legal consultation.

6. Several other submissions have been made on behalf of the applicant to demonstrate the falsity of the allegations made against him. The circumstances which, as per counsel, led to the false implication of the applicant have also been touched upon at length. Learned counsel has next stated that the duration or nature of the injury is not mentioned in the injury report of Manju Devi by the doctor conducting the medical examination. The applicant is languishing in jail since 25.8.2023. In case, the applicant is released on bail, he will not misuse the liberty of bail.

7. Learned A.G.A. has vehemently opposed the bail application but has not disputed the aforesaid submissions of learned counsel for the applicant.

8. Keeping in view the nature of the offence, evidence on record regarding complicity of the accused, larger mandate of the Article 21 of the Constitution of India and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.

9. Let the applicant- **Phoolchand Yadav** who is involved in aforementioned 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 following conditions. Further, before issuing the release order, the sureties be verified.

(i) The applicant shall not tamper with evidence.

(ii) 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.

10. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

11. It is made clear that observations made in granting bail to the applicant shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

(Justice Krishan Pahal)

Order Date :- 30.10.2023Shalini