

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44396 of 2023

Applicant :- Bismil

Opposite Party :- State of U.P.

Counsel for Applicant :- Sangam Lal Kesharwani, Ajay Kumar Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Heard Sri Sangam Lal Kesharwani, learned counsel for the applicant and Sri R.N. Srivastava, learned AGA for the State.

2. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 238 of 2023, under Sections 302, 147, 148, 149 IPC, Police Station Kotwali Mandi, District Saharanpur during pendency of the trial.

3. FIR of the present case was lodged against co-accused Waseem @ Jon Modal and others and according to the FIR on 01.08.2023 at about 10.30 PM in the night when brother of the informant was in the shop then co-accused Waseem @ Jon Modal came along with his associates and opened fire upon the brother of the informant and when informant and others arrived at spot then he along with his associates ran away on the motorcycle.

4. Learned counsel for the applicant submitted that applicant was not named in the FIR and on the basis of CCTV footage, which alleged to have been procured by the Investigating Officer during investigation, his name was revealed in the present matter.

5. He further submits that even as per prosecution the firearm was used by co-accused Waseem @ Jon Modal and there is no allegation against the applicant that he either opened fire or caused any injury to the deceased. He further submits that post mortem report of the deceased suggests that it is a case of single shot. He further submits that applicant is not having any criminal history and in the present matter he is in jail since 14.08.2023.

6. Per contra, learned AGA opposed the prayer for bail but could not dispute the fact that role of causing firearm injury has been

assigned to co-accuse Waseem @ Jon Modal and there is no allegation against the applicant that he also caused injury to the deceased.

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

8. Considering the fact that there is no allegation against applicant that he either opened fire or caused any injury to the deceased and role of causing firearm injury has been assigned to co-accused Waseem @ Jon Modal, in my view, applicant is entitled to be released on bail.

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

10. Let the applicant - **Bismil** 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.

11. 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.

12. 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 :- 18.10.2023

AK Pandey