

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44851 of 2023

Applicant :- Ishank Alias Ishu

Opposite Party :- State of U.P.

Counsel for Applicant :- Raj Kumar Mishra

Counsel for Opposite Party :- G.A.,Udai Bhatia

Hon'ble Samit Gopal,J.

1. List revised.
2. Heard Sri Raj Kumar Mishra, learned counsel for the applicant, Sri Udai Bhatia, learned counsel for the first informant, Sri Ram Prakash Shukla, learned AGA for the State and perused the material on record.
3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant Ishank Alias Ishu, seeking enlargement on bail during trial in connection with Case Crime No. 202 of 2023, under Sections 147, 148, 149, 302, 34 P.C. registered at P.S. Friends Colony, District Etawah.
4. The FIR of the matter was lodged on 18.07.2023 by Ram Naresh against five named accused persons namely Vinay Yadav, Ashutosh Bhadoriya@Shambhu Thakur, Prithviraj Bhadoriya@Raja Thakur, Roshan Chauhan, Chhotu@Fauji Yadav alleging therein that the accused persons assembling together and firing upon the deceased Shivam.
5. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that the applicant is not named in the F.I.R. and his name in the matter has surfaced during investigation. It is argued that the role of causing fatal injury on the neck of the deceased Shivam Yadav has been assigned to co-accused Vinay Yadav. It is argued that no specific role has been assigned to the applicant. It is further argued that co-accused Rohan Chauhan has been granted bail by a co-ordinate Bench of this Court vide order dated 18.09.2023 passed in CrI. Misc. Bail Application No. 36983 of 2023 (Rohan Chauhan Vs. State of U.P.), copy of the said order has been annexed as annexure no. 12 to the affidavit. Further the co-accused Ashutosh Bhadoriya@Shambhu Thakur has also been granted bail by this Court vide order dated 19.10.2023 passed in Criminal Misc. Bail Application No.

42543 of 2023, copy of the said order has been placed before the Court which is taken on record. It is argued that charge sheet in the matter has been submitted and as such there are no chances of the applicant tempering with the evidence and not to co-operate in the investigation. It is argued that after the present case the applicant is involved in one other case. The applicant is in jail since 20.09.2023.

6. Per contra, learned counsel for the first informant and learned counsel for the State opposed the prayer for bail and argued that in the CCTV footage of the place of occurrence where the accused persons were seen to have stopped the deceased and engaging him to talk after which Vinay Yadav fired upon the deceased. It is argued that the applicant was present with the other co-accused persons and stopped the deceased to engage him to talk but could not dispute the fact that co-accused Raohan Chauhan and Ashutosh Bhaduriya@Shambhu Thakur have been granted bail.

7. After having heard learned counsels for the parties and perusing the records, it is evident that the applicant is not named in the F.I.R. His implication has surfaced in the matter during investigation and even therein common and general role has been assigned to the applicant and other accused persons. Eye witness Suhail has assigned the specific role of firing on the neck of the deceased to co-accused Vinay Yadav. Co-accused Rohan Chauhan and Ashutosh Bhaduriya@Shambhu Thakur have been granted bail.

8. The case of the applicant is distinguishable with that of co-accused Vinay Yadav.

9. Looking to the facts and circumstances of this case, the nature of evidence and also the absence of any convincing material to indicate the possibility of tampering with the evidence, this Court is of the view that the applicant may be enlarged on bail.

10. Let the applicant- Ishank Alias Ishu, be released on bail in the aforesaid case crime number on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice:-

i) The applicant will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

ii) The applicant will abide the orders of court, will attend the

court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the date fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(iv) The applicant will not misuse the liberty of bail in any manner whatsoever. In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under section 82 Cr.P.C., may be issued and if applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under section 174-A I.P.C.

(V) 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 and the trial court may proceed against him under Section 229-A IPC.

(vi) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicant.

11. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail and send the applicant to prison.

12. The bail application is allowed.

(Samit Gopal,J.)

Order Date :- 6.11.2023

Naresh