

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44906 of 2023

Applicant :- Kashim

Opposite Party :- State of U.P.

Counsel for Applicant :- Sunil Kumar

Counsel for Opposite Party :- G.A., Mohammad Zakir

Hon'ble Vivek Varma,J.

1. Supplementary affidavit, filed by the counsel for the applicant, is taken on record.
2. Heard learned Counsel for the applicant, Sri Rupak Chaubey, learned A.G.A. for the State, Sri Mohammad Zakir, counsel for the informant and perused the record.
3. The instant bail application, under Section 439 Cr.P.C., has been filed with a prayer to enlarge the applicant on bail in Case Crime No. 1257 of 2020, Criminal Case No. 7952 of 2022, under Sections 147, 148, 149, 307 and 506 I.P.C., Police Station- Kotwali Nagar, District- Bulandshahar during pendency of the trial.
4. Counsel for the applicant contends that prior to the institution of the instant F.I.R. a first information report was lodged by Sub Inspector Narendra Kumar on 25.9.2020 registered as Case Crime No. 1256 of 2020, under Sections 147, 148, 149, 307 I.P.C. and Section 7 Criminal Law Amendment Act, P.S. Kotwali, District Bulandshahar. The said F.I.R. in brief states that while the informant was on patrol duty at Sarai Kazi Band Wali Gali, he found that two groups were firing at each other with the intention to kill. When the police force was called both the parties ran away firing in the air. At the spot, seven empty cartridges, a live cartridge and seven pairs of sleepers were recovered. In the said case, six persons from the side of the informant of the instant case including the injured Muzahid and seven persons from the side of the applicant were named. Thereafter, the present first information report was lodged against 13 persons including the applicant as Case Crime No.1257 of 2020, under Sections 147, 148, 149, 307, 506 I.P.C., P.S. Kotwali Nagar, District Bulandshahar. As per the allegations in the instant first information report the incident is alleged to have occurred on 24.9.2020 at 6.40 hours at the place called Band Wali Gali. As per the prosecution case Muzahid received a firearm injury from a shot fired by applicant from a 315

bore rifle. As per the medical report of Muzahid, he received two injuries i.e. (1) *firearm entry wounds (multiple) 27 cm x 10 cm x depth not probed on back of Lt. arm, margins are inverted bleeding present KUO advised X-ray*; (2) *firearm entry wounds (multiple) 18 cm x 8 cm on outer aspect of Lt side chest upper and middle part depth not probed KUO advised X-ray*. The injured was examined by the investigating officer on 7.10.2020. The injured stated that while he was on the roof of his uncle's house the applicant, who was also on the roof (applicant's house), inflicted a firearm injury. After having sustained the firearm injury he stayed at the roof, thereafter his aunt had taken him down stairs.

6. Counsel for the applicant contends that as per the first information report lodged by the inspector Narendra Kumar and as per the version of the informant, the place of occurrence was Band Wali Gali and the applicant caused injury by a 315 bore rifle. However, the injured Muzahid in his statement to the police altered the place of occurrence and the manner of assault. It is next contended that the nature of injuries caused cannot be caused by a rifle, as in a rifle, a bullet is used. In such circumstances, it is contended that there is no clarity with regard to the role of the applicant. The injured sustained injuries in the indiscriminate firing. The incident is alleged to have occurred at a public place. There is no independent witness of the alleged incident. The criminal history of the applicant has been explained in para 2, 3 and 4 of the supplementary affidavit. The applicant is in jail since 9.10.2023. In case he is enlarged on bail, he will not misuse the said liberty.

7. 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.

8. Having heard counsel for the parties and having perused the record, this Court prima facie finds that the injured in his statement to the police narrated an entirely different version regarding the place and manner of occurrence. Further the nature of injuries sustained by Muzahid, at this stage, it cannot be said that the same was caused by a 315 bore rifle. As per the FIR lodged by the Inspector both the parties were firing at each other indiscriminately. Thus, presently there is no clarity with regard to the role of the applicant. There is no independent witness to the alleged incident. Further the applicant has presently remained confined for more than one month and 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 intimidate the witness, without commenting on the merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

9. Let the applicant, **Kashim** involved in the aforesaid case be released on bail on his furnishing a personal bond and two sureties each of the like amount to the satisfaction of court concerned on the following conditions that:

- i. the applicant shall not tamper with the prosecution evidence;
- ii. the applicant shall not pressurize the prosecution witness;
- iii. the applicant shall appear on each and every date fixed by the trial court.

10. 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 :- 22.11.2023
S.S.