

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45146 of 2023

Applicant :- Devendra Thakur @ Devu

Opposite Party :- State of U.P.

Counsel for Applicant :- Janardan Prasad Tripathi

Counsel for Opposite Party :- G.A.,Nasiruzzaman

Hon'ble Sameer Jain,J.

1. Heard Sri Janardan Prasad Tripathi, learned counsel for the applicant, Sri Mohit Kumar Jaiswal, Advocate holding brief of Sri Nasiruzzaman, learned counsel for the informant and Sri Ajit Kumar Madheshiya, learned Brief Holder for the State.

2. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 174 of 2023, under Sections 302, 34, 307, 147, 148, 149 IPC and Section 3/25/27 Arms Act, Police Station Hathras Kotwali, District Hathras during pendency of the trial.

3. FIR of the present case was lodged against two unknown persons and according to the FIR two unknown motorcycle riders opened fire upon the brother of the informant and due to the fire opened by them, he sustained firearm injury on his left leg.

4. Learned counsel for the applicant submitted that initially FIR of the present case was lodged under Sections 307, 504 IPC but after the death of the injured, case was converted under Section 302 IPC.

5. He further submits that applicant was not named in the FIR and during investigation when the statements of eye witnesses were recorded then complicity of the applicant was revealed and admittedly applicant was not the person, who came on the motorcycle along with other accused and opened fire and role of firing has been assigned to co-accused Gaurav Chaudhary and according to the prosecution co-accused Gaurav Chaudhary had come on motorcycle along with Manish Kant Sharma and on the basis of allegation of conspiracy applicant has been made accused in the present matter and there is no evidence on record, which can show that applicant was either having common intention or

common object in commission of instant crime.

6. He further submits that applicant is having criminal history one case under Sections 419, 420 IPC but criminal history of the applicant has been explained in the instant bail application and in the present matter applicant is in jail since 07.07.2023.

7. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail but could not dispute the argument on facts advanced by learned counsel for the applicant.

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

9. Applicant is however having criminal history of one case under Sections 419, 420 IPC but his criminal history has been explained in the instant bail application and from the record it reflects that role of firing has been assigned to co-accused Gaurav Chaudhary and he is the person who came on the motorcycle along with co-accused Manish Kant Sharma and there is no allegation against the applicant that he either came on the motorcycle or he opened any fire upon the deceased.

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

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

12. Let the applicant - **Devendra Thakur @ Devu** 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.

13. 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.

14. 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 :- 27.10.2023

AK Pandey