

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45101 of 2023

Applicant :- Johnason Yadav

Opposite Party :- State of U.P.

Counsel for Applicant :- Swati Agrawal Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma,J.

1. Heard learned counsel for the applicant, learned A.G.A. for the State-opposite party and Sri Gopal Das Srivastava, learned counsel for the informant.

2. The instant bail application under Section 439 Cr.P.C. has been filed with the prayer to enlarge the applicant on bail in Case Crime No. 49 of 2023, under Sections 307, 120B, 195 I.P.C., Police Station Linebazar, District Jaunpur during the pendency of the trial.

3. The first information report in question was lodged alleging that on 30.01.2023 at 11.50 a.m. the informant was sitting with his relative Lalu @ Shailesh and all of a sudden four people came on two bikes and started firing on the informant, however, the informant could save himself somehow. It is also written that the firing, which was aimed at the informant, ultimately affected Lalu who sustained grievous injuries. Three persons were named in the first information report and the fourth person was not named in the first information report.

4. Learned counsel for the applicant submits that the applicant has been falsely implicated in the instant case. In the first information report a vague and general role of firing has been assigned to the applicant. The injured was admitted in B.H.U. Trauma Centre, Varanasi on 30.01.2023 and was discharged from the hospital on 13.02.2023. On 10.02.2023 the statement of the injured was recorded. In the said statement also the applicant was not nominated as the offender who caused the gunshot injury on his chest. Subsequently, on 15.03.2023 in the third statement of the injured the applicant was nominated as the offender who caused the gunshot on his chest. It is contended that the said statement is an afterthought and discredits the prosecution case. It is next contended that co-accused Rajnish Yadav and Sachin Yadav @ Dev Yadav have been granted bail by this Court in Criminal Misc. Bail Application Nos. 15023 of 2023, Rajnish Yadav v. State of U.P., and 41450 of 2023, Sachin Yadav @ Dev Yadav v. State of U.P.,

vide orders dated 02.08.2023 and 12.10.2023 respectively. The applicant claims parity. The criminal history of the applicant has been explained in Paragraph-14 of the affidavit. The applicant is in jail since 02.02.2023 and if he is released on bail, he will not misuse the said liberty.

5. Learned A.G.A. and learned counsel for the informant have opposed the prayer for bail but could not satisfactorily dispute the aforesaid submissions from the record.

6. Having heard learned counsel for the parties and after perusal of the record, this Court prima facie finds that in the first information report as well as in the statement of the injured recorded on 10.03.2023 the applicant has not been nominated as the principal offender, who caused injury. Subsequently, after almost three months the injured altered his earlier version. Thus, at this stage there is no clarity with regard to the role of the applicant. The inconsistencies in the first information report and the first statement of the injured on one hand and the third statement on the other hand discredit the prosecution case. Further, co-accused Rajnish Yadav and Sachin Yadav @ Dev Yadav have been granted bail by this Court. The applicant has remained confined for more than eight months and after submission of the charge-sheet there is no hope of early conclusion of trial, and 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 delay the trial or intimidate the witness, therefore, without commenting on the merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

7. Let the applicant- Johnson Yadav, involved in the aforesaid case, be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of Court concerned subject to the conditions that he:

- (i) shall appear on the date fixed by the trial court;
- (ii) shall not tamper with the prosecution evidence; and,
- (iii) shall not pressurize the prosecution witnesses.

8. 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 :- 27.10.2023

SKT/-