

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46224 of 2023

Applicant :- Bauva Thakur @ Shailendra Singh

Opposite Party :- State of U.P.

Counsel for Applicant :- Manish Kumar Singh, Pavan Kishore

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Supplementary affidavit filed today on behalf of the applicant is taken on record.
2. Heard Sri Pavan Kishore, learned counsel for the applicant and Sri Ravi Kant Kushwaha, learned AGA for the State-respondent.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 247 of 2022, under Sections 304, 379, 411 IPC, Police Station Kotwali Nagar, District Banda, during pendency of the trial in the court below.
4. FIR of the present case was lodged on 13.4.2022 against the applicant, one Pramod Yadav @ Modi and one unknown person under section 302 IPC and according to the FIR on 11.4.2022, applicant and his two associates made assault through knife upon the father of the informant and after causing knife injury to him they have thrown him on the road.
5. It is further mentioned in the FIR that Kamal Singh, Vade Prajapati and Harish Chandra Domar witnessed that applicant and other accused persons were running from spot.
6. Learned counsel for the applicant submitted that from the perusal of the FIR, it appears that informant of the case was not an eye witness and he lodged FIR after two days.
7. Further, although in the FIR it is mentioned that three persons witnessed the applicant and other accused persons while they were running from the spot but surprisingly during investigation their statements have not been recorded by the Investigating Officer.
8. He further submitted that even during investigation involvement of Pramod Yadav@Modi was found false and charge sheet was

only filed against the applicant.

9. He further submitted that there is no evidence which can show that applicant participated in the alleged crime.

10. He further submitted that applicant is having criminal history of about 38 cases and merely due to his previous criminal history, he has been made accused in the present case.

11. He further submitted that entire criminal history of the applicant has been explained in the supplementary affidavit filed in support of the instant bail application.

12. He further submitted that although initially FIR of the present case was lodged under sections 302 IPC but charge sheet was filed under sections 304, 379, 411 IPC.

13. He further submitted that applicant is in jail in the present matter since 15.4.2022 i.e. for more than one and half years.

14. Per contra, learned AGA opposed the prayer for and submitted that applicant is hardened criminal and he is having criminal history of about 40 cases but could not dispute the fact that there is no eye witness account and three witnesses who alleged to have witnessed the applicant and other accused persons while they were running from spot, their statements were not recorded by the Investigating Officer, during investigation.

15. He further could not dispute the fact that applicant is facing trial under sections 304, 379, 411 IPC and he is in jail for last more than one and half years.

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

17. From perusal of the record, it appears that although as per FIR three persons Kamal Singh, Vade Prajapati and Harish Chandra Domar witnessed the applicant and other accused persons while they were running from the spot but surprisingly their statements were not recorded by the Investigating Officer and except these three witnesses there is no other evidence on record which can show that applicant is the person who committed the instant crime. The informant of the case is not an eye witness.

18. Further, FIR of the present case was lodged after two days. However, it appears from the record that applicant is having

criminal history of about 38 cases but criminal history of the applicant has been explained in the supplementary affidavit filed in support of the instant bail application and as per learned counsel for the applicant due to the criminal history of the applicant, he has been made accused in the present matter. The defence taken by the learned counsel for the applicant cannot be ruled out, at this stage, specially considering the fact that FIR of the present case was lodged after two days and statements of three witnesses whose name were disclosed in the FIR were not recorded by the Investigating Officer during investigation.

19. Further although FIR of the present case was lodged under sections 302 IPC but during investigation, case was converted under section 304 IPC and charge sheet was filed against the applicant under sections 304, 379, 411 IPC and applicant is in jail for last more than one and half years.

20. Further, bail application of an accused should not be dismissed merely on the basis of his criminal antecedents, if otherwise case of bail is made out.

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

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

23. Let the applicant-**Bauva Thakur @ Shailendra Singh**, 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.

24. 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.

25. 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 :- 1.11.2023

Ankita