

Neutral Citation No. - 2023:AHC:214540

Reserved On:- 06.11.2023

Delivered On:- 08.11.2023

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45696 of 2023

Applicant :- Jitendra Singh

Opposite Party :- State of U.P.

Counsel for Applicant :- Perdeep Kumar Vishnoi, Sarve Nazir

Counsel for Opposite Party :- G.A.

Hon'ble Siddharth, J.

1. Heard Sri Pradeep Kumar Bishnoi, learned counsel for the applicant, Sri Pawan Kumar Shukla, learned counsel for the first informant and learned A.G.A. for the State and perused the material on record.
2. There is allegation against unnamed accused in the FIR that *mama* of the informant was residing with him for last 15 days and on 04.08.2023 at about 06:00 p.m he received information that some unknown accused have caused gun shot injury on his head and he died. Hence, FIR was lodged.
3. Learned counsel for the applicant submits that no one has seen the incident. There is evidence of last seen against him near the place of incident. The applicant has admitted committing the alleged offence on mobile phone of witness, Vansh @ Shanu. Shivam has also seen the applicant and co-accused, Vineet, near the scene of incident like Anil Kumar and Smt. Manmeet. There is confession of the applicant recorded.
4. Learned counsel for the applicant also submits that the main motive of commission of crime has been assigned to co-accused, Chandrapal, regarding the property of deceased and in his statement the name of the

applicant has surfaced as the person who was paid money for eliminating the deceased. There is confessional statement of applicant also recorded before the police wherein he has admitted that he was paid money and provided weapon for committing the alleged offence but no recovery of weapon was made from his pointing out.

5. Counsel for the applicant has further submitted that the applicant has been falsely implicated in this case. Recovery of 315 bore country made pistol and a live cartridge has been made on the pointing out of co-accused, Vineet Kumar and not the applicant and also motorcycle used in the crime was found in his name. The applicant alleges false implication in this case. He is in jail since 09.08.2023 and has criminal history of 2 cases explained in paragraph 22. In one case he has been acquitted and in another case he is on bail. Both the case are of minor nature.

6. Keeping in view the nature of the offence, evidence, complicity of the accused; submissions of the learned counsel for the parties noted above; finding force in the submissions made by the learned counsel for the applicant; keeping view the uncertainty regarding conclusion of trial; one sided investigation by police, ignoring the case of accused side; applicant being under-trial having fundamental right to speedy trial; larger mandate of the Article 21 of the Constitution of India; considering the dictum of Apex Court in the case of **Satendra Kumar Antil vs. C.B.I., passed in S.L.P (Crl.) No. 5191 of 2021**; considering 5-6 times overcrowding in jails over and above their capacity by the under trials and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.

7. Let the applicant, Jitendra Singh, involved in Case Crime No. 149 of 2023, under Sections- 302, 120-B, 34 IPC, Police Station- Chajlait,

District- Moradabad, be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions. Further, before issuing the release order, the sureties be verified.

(i) The applicant shall not tamper with the evidence or threaten the witnesses.

(ii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates 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.

(iii) The applicant shall remain present before the Trial Court on each date fixed, either personally or as directed by the Court. In case of his absence, without sufficient cause, the Trial Court may proceed against him under Section 229-A of the Indian Penal Code.

(iv) 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. is issued and the 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 of the Indian Penal Code.

(v) The applicant shall remain present in person before the Trial Court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) 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.

8. In case, of breach of any of the above conditions, it shall be a ground for cancellation of bail.

9. Identity and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

10. Trial court is directed to conclude the trial of the applicant as expeditiously as possible preferably within a period of one year.

11. Registrar (compliance) is directed to communicate this order to the trial Court for necessary compliance within ten days.

Order Date :- 08.11.2023

Rohit