

Court No. - 76

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46021 of 2023

Applicant :- Aslam Khan

Opposite Party :- State of U.P.

Counsel for Applicant :- Raghuvansh Misra

Counsel for Opposite Party :- G.A.

Hon'ble Vikram D. Chauhan, J.

1. Learned A.G.A. for the State submits that instructions have been received and has no objection in case the bail application is heard on merits.

2. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.

3. It is submitted by learned counsel for the applicant that as per allegations in the first information report, the nominated accused persons have assaulted the injured, as a result of the same, the injured has suffered injuries. Specific role of firing on injured has been assigned to the applicant. Injured/informant has suffered one firearm injury in the abdomen.

3-A. Submission of learned counsel for the applicant is that there is no dispute to the fact that the firearm injury has been suffered by the informant, as per the medical report, however, a perusal of the first information report would demonstrate that the alleged incident has taken place on 12.01.2023 at 11:30 pm, whereas, the first information report has been lodged on the next day on 13.01.2023 at 18:22 hours. Learned counsel for the applicant submits that there is inordinate delay in lodging of the FIR more particularly when the injured was medically examined on 13.01.2023 at 9:30 am. Injury report of the injured/informant is at page-27 of the paper-book. He further submits that as per medical report firearm injury has been caused by unidentified person and the aforesaid recital in the medical report is on the basis of the information received from brother of the informant namely- Akshay. As per medical report, when the patient reached the medical center, he was conscious and his arms and forelimbs were moving. On the aforesaid basis, learned counsel for the applicant submits that even the patient was conscious, as well as, the brother

of the informant was aware as he claims in his statement, which is recorded under Section 161 Cr.P.C. that he is the eye-witness of the aforesaid incident.

3-B. Learned counsel for the applicant submits that once the patient was conscious and brother of the informant was the eye-witness of the incident, who had taken him to the hospital, then recording of the recital in the medical report that the firearm injury has been caused by the unidentified person creates doubt in the prosecution story. More particularly the FIR was lodged after medical examination at 18:22 hours on 13.01.2023. Initially, the injured was not having knowledge of the persons who has caused firearm injury, as the incident has taken place at night hours and as per map prepared by the investigating officer, no source of light has been shown in the map. Subsequently, in order to falsely implicate the applicant the FIR has been lodged at 18:22 hours. The prosecution story is highly improbable and creates doubt. In view of the aforesaid it is also submitted that co-accused Brijesh has already been enlarged on bail and during investigation name of co-accused Raj Pal has been exonerated. The criminal history of the applicant has been explained in paragraph no. 30 of the affidavit. Applicant is languishing in jail since 18.07.2023 and in case he is released on bail, he will not misuse the liberty of bail and will cooperate in the trial.

4. Learned A.G.A. for the State opposed the prayer for bail and submits that as per medical report the injured has suffered firearm injury which were life threatening, however, on a pointed query being made to the learned A.G.A., as to whether, explanation offered with regard to the delay in lodging of the FIR more particularly when the patient was conscious and he himself has lodged the FIR after being medically attended by the hospital, learned A.G.A. could not give any reason for such discrepancy.

5. Learned AGA for the State has pointed out the criminal antecedents of the applicant. No material or circumstance has been brought to the notice of this Court with regard to tampering of evidence or intimidating of witness in previous criminal cases. In **Ash Mohammad Vs. Shiv Raj Singh, (2012) 9 SCC 446**, the Apex Court in para 30 has observed:-

"We may hasten to add that when we state that the accused is a history-sheeter we may not be understood to have said that a history-sheeter is never entitled to bail. But, it is a significant factor to be taken note of regard being had to the nature of crime in respect of which he has been booked."

6. In the case of **Prabhakar Tewari Vs. State of U.P. and another, 2020 (11) SCC 648**, the Hon'ble Supreme Court has observed that pendency of several criminal cases against an accused may itself cannot be a basis for refusal of bail.

7. In so far as criminal antecedents of the applicant is concerned, it is not the case of the State that applicant might tamper with or otherwise adversely influence the investigation, or that he might intimidate witnesses before or during the trial. The State has also not placed any material that applicant in past attempted to evade the process of law. If the accused is otherwise found to be entitled to bail, he cannot be denied bail only on the ground of criminal history, no exceptional circumstances on the basis of criminal antecedents have been shown to deny bail to accused, hence, the Court does not feel it proper to deny bail to the applicant just on the ground that he had criminal antecedent.

8. The principle that Bail is a rule and Jail is an exception has been well recognised by Apex Court more specifically on the touch stone of Article 21 of the Constitution. The said principle has been reiterated by the Apex Court in **Satyendra Kumar Antil Vs. Central Bureau of Investigation and another, 2022 (10) SCC 51**. Learned AGA has not shown any exceptional circumstances which would warrant denial of bail to the applicant.

9. No material, facts or circumstances has been shown by learned AGA for the State that the accused may tamper with the evidence or witnesses or the accused is of such character that his mere presence at large would intimidate the witnesses or that accused will use his liberty to subvert justice or tamper with the evidence.

10. It is settled principle of law that the object of bail is to secure the attendance of the accused at the trial. No material particulars or circumstances suggestive of the applicant fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like have been shown by learned AGA for the State.

11. Learned AGA for the State has not shown any material or circumstances that the accused/applicant is not entitled to bail in larger interests of the public or State.

11-A. In the present case, it is to be seen that the FIR has been lodged with the allegation that the applicant has assaulted the injured with firearm as a result of the same injured/informant has suffered firearm injury. The incident has taken place on 12.01.2023

at about 11:30 pm, whereas, the FIR has been lodged on 13.01.2023 at 18:22 hours. It is further to be noted that after the alleged incident the injured/informant was taken for medical treatment on 13.01.2023 at 9:30 am. He was medically examined and in the medical examination report, which is at page-27 of the paper-book, it has been stated that the firearm injury has been caused by unidentified persons. The aforesaid recital has been recorded in the medical report on the basis of the information received from brother of the informant, namely, Akshay. As per medical report, the patient was conscious and the forelimbs were moving. Subsequently, statement of the brother of the informant was recorded, who has stated that he has seen the incident in the light from the electricity bulb. Similar statement has been made by the informant/injured. A perusal of the map prepared during investigation would go on to state that there is no source of light shown in the map. Further, it is not a natural conduct where the medical examination has been held on 9:30 am and the FIR has been lodged by the injured at 18:22 hours on the same day. The aforesaid fact is indicative of the fact that the injuries were not fatal in nature as has been claimed by the prosecution.

12. Considering the facts and circumstances of the case, nature of offence, evidence, complicity of the accused, submissions of learned counsel for the parties 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.

13. Let the applicant **Aslam Khan** involved in Case Crime No. 07 of 2023, under Sections 307, 504 IPC, Police Station Nayagaon, District Etah, be released on bail on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to the following conditions:-

- i. The applicant will not tamper with the evidence during the trial.
- ii. The applicant will not pressurize/intimidate the prosecution witness.
- iii. The applicant will appear before the trial court on the date fixed, unless personal presence is exempted and/or the applicant shall make himself available for interrogation by a police officer as and when required.
- iv. The applicant shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.

v. The applicant shall not directly or indirectly make any 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 to any police officer or tamper with the evidence.

vi. The applicant shall not leave India without the previous permission of the Court.

vii. In the event, the applicant changes residential address, the applicant shall inform the court concerned about new residential address in writing.

14. In case of breach of any of the above condition, the prosecution shall be at liberty to move bail cancellation application before this Court.

Order Date :- 7.11.2023

S.Prakash