

Court No. - 68

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 55631 of 2022

Applicant :- Javed

Opposite Party :- State of U.P.

Counsel for Applicant :- Ajay Kumar Mishra

Counsel for Opposite Party :- G.A.,Dr. D.K. Tiwari,Pawnesh Tiwari

Hon'ble Dr. Gautam Chowdhary,J.

1. Heard learned counsel for the applicant, learned A.G.A. for the State as well as learned counsel for the informant and perused the record.
2. This is the second bail application filed on behalf of accused/applicant-Javed. The first bail application was rejected by a coordinate Bench of this Court vide order dated 20.09.2021 passed in Criminal Misc. Bail Application No. 9412 of 2019.
3. Learned counsel for the applicant submits that after passing of the first bail rejection order of the applicant, the complainant-Mohd. Rais (P.W.1), who is also an eye witness of the incident has been examined before the court below on 18.08.2023, wherein he had categorically stated that he told Usman regarding the incident, who written the application on which he made his signature, he had not lodged the case against Javed (applicant), Mohd. Zaid, Meraj, Ehtesham and Mohd. Noorain, they have not assaulted his brother-in-law by lathi-danda or iron rod and also not shot the fire, the persons who killed the deceased were put piece of clothes on their mouths due to which he could not identify them. Thus, learned counsel for the applicant further submits that complainant has not made any allegation against the applicant. Learned counsel for the applicant further submits that wife of the complainant, who was also an eye witness of the incident, was also examined before the court below on 29.08.2023 as P.W.2 had repeated the same version of the complainant and has stated that she had not seen the assailants, thus, she has not made any allegation against the applicant, hence, there is bleak chance that prosecution may prove its case beyond reasonable doubt and the applicant may be convicted. Several other submissions in order to demonstrate the falsity of the allegations made against the applicant have also been

placed before the Court. The circumstances which, according to the counsel, led to the false implication of the accused have also been mentioned. It has also been assured on behalf of the applicant that he is ready to cooperate with the process of law and shall faithfully make himself available before the court whenever required and is also ready to accept all the conditions which the Court may deem fit to impose upon him. Learned counsel for the applicant further submits that criminal history of five cases has been explained in the supplementary affidavit dated 20.09.2023 and in all the cases the applicant is on bail. He next submits that applicant is languishing in jail since 23.03.2018 and has already undergone a substantial period of incarceration, therefore, he deserves to be enlarged on bail sympathetically.

4. Per contra, learned A.G.A. as well as learned counsel for the informant have opposed the prayer for bail of the applicant by contending that the innocence of the applicant cannot be adjudged at pre trial stage, therefore, he does not deserve any indulgence, but they have not disputed that eye witnesses, P.W.1 & P.W.2 have not made any allegation against the applicant in their statements recorded before the court below.

5. After perusing the record in the light of the submissions made at the bar and after taking an overall view of all the facts and circumstances of this case, the nature of evidence and also the absence of any convincing material to indicate the possibility of tampering with the evidence, without expressing any opinion on merits of the case, this Court is of the view, that the applicant may be enlarged on bail.

6. Let applicant-**Javed**, involved in S.T. No. 240 of 2018, arising out of Case Crime No. 94 of 2018, under Sections 147, 148, 149, 307, 302, 427, 34 I.P.C. and Section 7 of Criminal Law (Amendment) Act, Police Station Nawabganj, District Allahabad (Prayagraj), be enlarged on bail on furnishing a personal bond and two heavy local sureties each of the like amount to the satisfaction of the court concerned subject to the following conditions:-

(i) The applicant will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

(ii) The applicant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

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

(iv) The applicant will not misuse the liberty of bail in any manner whatsoever. 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., may be issued and if 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 I.P.C.

(v) The applicant shall remain present, in person, before the trial court on dates fixed for (1) opening of the case, (2) framing of charge and (3) 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 and the trial court may proceed against him under Section 229-A IPC.

7. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail in accordance with law.

8. The bail application is **allowed**.

Order Date :- 16.11.2023

Mustaqeem.