

Court No. - 72

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47229 of 2023

Applicant :- Kailash

Opposite Party :- State of U.P.

Counsel for Applicant :- Piyush Tripathi

Counsel for Opposite Party :- G.A., Tiwari Abhishek Rajesh

Hon'ble Krishan Pahal, J.

1. List has been revised.
2. Heard Shri Piyush Tripathi, learned counsel for the applicant, Shri Gyan Prakash Dwivedi holding brief of Shri Tiwari Abhishek Rajes, learned counsel for the informant and Shri Pannkaj Kumar, learned A.G.A. for the State and perused the material placed on record.
3. Applicant seeks bail in Case Crime No. 120 of 2022, under Sections 323, 354B, 504, 506, 307, 147, 148, 34 IPC, Police Station Rajpur, District Kanpur Dehat, during the pendency of trial.
4. As per prosecution case, applicant along with other co-accused persons only due to old enmity are stated to have barged into the house of the informant and has assaulted the wife of the informant on 05.09.2022 at about 1:00 P.M. causing grievous injuries to her.
5. Learned counsel for the applicant has argued that the applicant is absolutely innocent and has been falsely implicated in the present case. It is wrongly averred in the FIR that the date of incident is 05.09.2022 as medical report has been prepared on 05.10.2022, as such, prosecution story stands falsified. Learned counsel for the applicant further stated that even if it is considered that the date of incident is of 05.10.2022, there is delay of 16 days in lodging the FIR. The said inordinate delay not not been explained. It is further contended that the present FIR is counter blast of FIR No. 124 of 2021 instituted by the mother of the applicant herein against the informant and other family members. There is a land dispute between the parties. Several other submissions have been made on behalf of the applicant to demonstrate the falsity of the allegations made against him. The

circumstances which, as per counsel, led to the false implication of the applicant have also been touched upon at length. It is further stated that there is no criminal history of the applicant. The applicant is languishing in jail since 04.09.2023. In case, the applicant is released on bail, he will not misuse the liberty of bail.

6. Per contra, learned counsel for the informant and learned A.G.A. has stated that applicant has a criminal history of one case assigned to him i.e. FIR No. 492/21. He has not annexed any order regarding it.

7. In rebuttal, learned counsel for the applicant has stated that the said offence is bailable. All the offences are minor and below three years._In support of his submission, learned counsel has place reliance upon the judgment of ***Prabhakar Tewari vs. State of U.P. and another, 2020 (11) SCC 648***, wherein, the Apex Court has observed that pendency of several criminal cases against an accused itself cannot be a basis for refusal of bail, if otherwise his case for bail is made out. In case, the applicant is released on bail he will not misuse the liberty of bail and shall cooperate with trial.

8. Considering the facts and circumstances of the case, submissions made by learned counsel for the parties, the evidence on record, 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.

8. Let the applicant- **Kailash**, who is involved in aforementioned case crime 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 evidence.

(ii) 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.

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

10. It is made clear that observations made in granting bail to the

applicant shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

Order Date :- 24.11.2023

Mukesh Kr.

(Krishan Pahal,J.)