

Court No. - 72

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47437 of 2023

Applicant :- Shailesh Kumar Yadav

Opposite Party :- State of U.P.

Counsel for Applicant :- Ram Krishna Mishra, Ramesh Chandra Yadav

Counsel for Opposite Party :- G.A., Amit Kumar Chauhan

Hon'ble Krishan Pahal, J.

1. List has been revised.
2. Heard Sri Manoj Kumar, Advocate holding brief of Sri Ramesh Chandra Yadav, learned counsel for the applicant, Sri Amit Kumar Chauhan, learned counsel for the informant as well as Sri Sunil Kumar, learned A.G.A. for the State and perused the material placed on record.
3. Applicant seeks bail in Case Crime No.232 of 2023, under Sections 307, 120-B I.P.C., Police Station Pawai, District Azamgarh, during the pendency of trial.
4. As per the allegations in the FIR which was instituted by the wife of the injured person, the co-accused person Dinesh Yadav in collusion with 3-4 unknown persons is stated to have gone with the husband of the informant on motorcycle no. UP62AS0223 on 13.7.2023 at about 10:00 p.m. and is stated to have fired at him on his head from backside who was seated on the rear seat of the motorcycle, thereby causing grievous injuries to him. The named accused person Dinesh Yadav is stated to have run away from the scene of occurrence.
5. Learned counsel for the applicant has argued that the applicant is absolutely innocent and has been falsely implicated in the present case with a view to cause unnecessary harassment and to victimize him. There are particular allegations against the co-accused person Dinesh Yadav in the FIR, but later on the name of the applicant has come up in the statement of the injured person recorded on 15.7.2023. Learned counsel has stated that the injured person was not unconscious at the time of admission in the hospital as is evident that his Glasgow Coma Scale was $E_4V_4M_6$,

in total 16, as such, he was oriented and conscious. Learned counsel has stated that the name of the applicant has come up later on after legal consultations out of political rivalry of panchayat elections.

6. Learned counsel for the applicant has further stated that the injured person himself has a criminal history of five cases across several districts, as such the instant case is a blind case and the applicant has been roped in it later on. Learned counsel has stated that even the informant has later on changed her version and has stated that it was the applicant who had shot her husband. Statement of several independent witnesses have been taken up by the Investigating Officer and they have not stated that some unknown persons were there at the time of incident.

7. 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 21.7.2023. In case, the applicant is released on bail, he will not misuse the liberty of bail.

8. Per contra, learned counsel for the informant and learned A.G.A. have vehemently opposed the bail application on the ground that three pieces of bullet were recovered from the cranium of the injured person by the treating doctor as is evident from his statement and endorsement to the effect in injury report itself. Learned counsel for the informant has further stated that the injured person being unconscious had named the applicant after gaining consciousness.

9. The Glasgow Coma Scale is a parameter as to ascertain whether the person is conscious or not and in the instant case the GCS reads out to be 16, which categorically states that the applicant was conscious at the time of admission in the hospital, as such the prosecution version of the injured person being unconscious stands falsified.

10. Considering the facts and circumstances of the case, submissions made by learned counsel for the parties, the evidence on record and taking into consideration that applicant is not named in the FIR and his name has come up later on after two days of the incident coupled with the fact that applicant has no criminal antecedent to his credit in addition to the fact that there is a criminal history of five cases assigned to the injured person, 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.

11. Let the applicant- **Shailesh Kumar Yadav**, 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.

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

13. 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 :- 15.12.2023

Vikas

[Krishan Pahal, J.]