

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48472 of 2023

Applicant :- Atar Singh

Opposite Party :- State of U.P.

Counsel for Applicant :- Ruchi Mishra, Rajesh Yadav

Counsel for Opposite Party :- G.A., Diwanshu Tiwari, Janardan Yadav, Pawan Pratap Singh

Hon'ble Sameer Jain, J.

1. Sri Diwanshu Tiwari, Advocate, submitted that he is one of the counsel for the informant and due to mistake his name has been shown in the cause list as a counsel for the applicant.
2. Heard Sri Rajesh Yadav, learned counsel for the applicant, Sri Diwanshu Tiwari and Sri Janardan Yadav, learned counsels for the informant and Sri Ajit Kumar Madhesiya, learned brief holder for the State-respondent.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 141 of 2023, under Sections 302, 307, 341, 504, 34 IPC & 7 Criminal Law Amendment Act, Police Station- Kannauj, District- Kannauj, during pendency of the trial in the court below.
4. FIR of the present case was lodged against applicant and six others and according to the FIR, on 07.03.2023 at about 4:00 p.m. when informant was going along with his brother on the motorcycle, on the way applicant and other accused persons intercepted them and started firing upon them and applicant opened fire upon the brother of the informant.
5. It is further mentioned in the FIR that after hearing the shriek of the informant, three persons arrived at spot and thereafter applicant and other accused persons ran away. It is further mentioned in the FIR that due to fire arm injury, brother of the informant died.
6. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and baseless and however, in the FIR and in the first statement of the informant, role of causing fire arm injury to the deceased has been attributed

to the applicant but when the second statement of the informant under Section 161 Cr.P.C. was recorded then he attributed only general role to all the accused persons including applicant. He further submitted that all the other prosecution witnesses also attributed general role to all the accused persons including applicant.

7. He further submitted that bail applications of co-accused Naresh Pal, Anoop Singh and Amar Singh, who were also named in the FIR alongwith the applicant, have already been allowed by this Court and considering the second statement of the informant and statements of the witnesses, case of applicant is at par with them.

8. He further submitted that however, as per the prosecution, during investigation, when the applicant was arrested then on his pointing out, a country made pistol was recovered but from the perusal of the recovery memo, it appears that the alleged country made pistol was recovered from an open place and till date, it could not be connected with the instant crime.

9. He further submitted that applicant is not having any criminal history and he is in jail since 10.03.2023.

10. Per contra, learned AGA as well as learned counsels appearing on behalf of the informant opposed the prayer for bail and submitted that in the FIR and in the first statement of the informant, role of causing fire arm injury to the deceased has been specifically attributed to the applicant and even from the second statement of the informant, it could not be reflected that applicant did not participate in the instant crime.

11. They further submitted that from the perusal of the bail order of co-accused Anoop Singh, it appears that his case was distinguished from the case of applicant and even applicant cannot claim parity with co-accused Naresh Pal and Amar Singh as only general role has been assigned to them since beginning and, therefore, considering the allegation made against the applicant, he should not be released on bail.

12. I have heard learned counsel for the parties and perused the record of the case.

13. From the record, it reflects that informant accompanied the deceased and in the FIR and in his first statement recorded under Section 161 Cr.P.C., he attributed the role of causing fire arm injury to the deceased to the applicant, however, when his second

statement was recorded under Section 161 Cr.P.C. then he stated about the enmity and stated that applicant along with other accused persons committed the murder of his brother by causing fire arm injury to him. In my view, even from the second statement of the informant, it could not be reflected that only general role has been attributed to the applicant rather from the second statement of the informant, it reflects that it was in continuation with his first statement and it cannot be read in isolation.

14. Further, however, during investigation, when the statements of other witnesses were recorded then they assigned only general role to all the accused persons including applicant but as specific role of causing fire arm injury has been attributed to the applicant in the FIR and in the first statement of the informant, therefore, at this stage, prima facie, it cannot be said that applicant did not participate in the instant crime.

15. Further, although, bail applications of co-accused Naresh Pal, Anoop Singh and Amar Singh have been allowed by this Court but considering the FIR, their cases were distinguishable from the case of applicant.

16. Therefore, considering the facts and circumstances of the case discussed above, in my view, applicant is not entitled to be released on bail.

17. Accordingly, the instant bail application is ***rejected***.

18. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial.

Order Date :- 22.11.2023

KK Patel