

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47340 of 2023

Applicant :- Samiuddin @ Munna

Opposite Party :- State of U.P.

Counsel for Applicant :- Divyansh Rai

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Supplementary affidavit filed today on behalf of the applicant is taken on record.

2. Heard Sri Devashish Mitra, Advocate holding brief of Sri Divyansh Rai, learned counsel for the applicant and Dr. S.B. Maurya, learned AGA-I for the State.

3. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 350 of 2023, under Sections 302, 307, 120B IPC, Police Station Hathras Gate, District Hathras during pendency of the trial.

4. FIR of the present case was lodged against co-accused Imran and according to the FIR co-accused Imran opened happy firing in marriage ceremony and due to the firing opened by him, mother of the informant and his niece sustained injuries and subsequently his niece during treatment died.

5. Learned counsel for the applicant submitted that applicant was not named in the FIR but after six months when subsequent statement of injured Smt. Bhoori i.e. mother of the informant was recorded then she disclosed the name of applicant. He further submits that even she only stated that applicant was also present at spot along with principal accused Imran. He further submits that there is no allegation against the applicant that he opened fire.

6. He next submits that applicant is having criminal history of 12 cases but he has explained his criminal history in the supplementary affidavit filed in support of present application. He next submits that applicant in the present matter is in jail since 19.08.2023.

7. Per contra, learned AGA opposed the prayer for bail and submits that applicant is having criminal history of 12 cases but could not dispute the fact that his name was revealed in the present matter after six months through the statement of injured Smt. Bhoori and injured did not assign any active role to him and only stated that he was present along with principal accused Imran.

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

9. However, applicant is having criminal history of 12 cases but applicant has explained his criminal history in paragraph-2 to the supplementary affidavit filed in support of present application and from the record it reflects that his name was revealed in the present matter after six months from the date of alleged incident through the subsequent statement of injured recorded under Section 161 Cr.P.C. and even from the statement of injured, it appears that she only stated that applicant was also standing at spot along with principal accused Imran and there is no allegation that applicant also opened happy firing.

10. Further, law is settled that merely on the basis of criminal history of an accused, bail should not be dismissed if otherwise case of bail is made out. Further, applicant in the present matter is in jail since 19.08.2023.

11. Therefore, considering the facts and circumstances of the case discussed above, in my view, applicant is entitled to be released on bail.

12. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is **allowed**.

13. Let the applicant - **Samiuddin @ Munna** be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicant shall appear before the trial court on the dates fixed, unless his personal presence is exempted.

(ii) The applicant shall not directly or indirectly, make 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 any police officer or tamper with the evidence.

(iii) The applicant shall not indulge in any criminal and anti-social activity.

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

15. 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 :- 5.12.2023

AK Pandey