

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47259 of 2023

Applicant :- Satyendra Kumar Bajpai And 2 Others

Opposite Party :- State of U.P.

Counsel for Applicant :- Pranav Tiwary, Atharva Dixit, Sr. Advocate

Counsel for Opposite Party :- G.A., Sunil Kumar Srivastava

Hon'ble Vivek Varma, J.

1. Heard counsel for the applicants, Sri Sunil Kumar Srivastava, counsel for the informant and Sri V.P. Tripathi, learned A.G.A. for the State-opposite party.

2. The instant bail application under Section 439 Cr.P.C. has been filed with the prayer to enlarge the applicants on bail in Case Crime No. 90 of 2023 under Sections 147, 148, 149, 323, 324, 326, 354, 504 and 506 of I.P.C., Police Station- Raipurwa, District-Kanpur Nagar, during the pendency of the trial.

3. The prosecution story, in brief, states that on 24.09.2023 at about 12:30 in the night, the informant, after closing his shop, along with his wife, was going to his house. When he was near Afeem Kothi, an Ertiga Car bearing registration no. UP78GV9291 overtook the car of the informant, and thereafter the informant was allegedly assaulted by sharp edged weapons. Further, the miscreants allegedly misbehaved with the wife of the informant and threatened them that he was a BJP Corporator.

4. Counsel for the applicants contends that the applicants have been falsely implicated in the present case. The incident is alleged to have occurred on 24.09.2023 at 12:30 AM. The first information report was lodged on 24.09.2023 at 1828 hours. On 24.09.2023 at 02:47 AM, the injured was examined at Manyavar Kanshiram Sanyukth Chikitsalaya & Trauma Centre, Kanpur Nagar. The doctor found five injuries. The injury nos. 2, 3 and 4 were simple in nature. The injury nos. 1 and 5 were kept under observation and were referred to the Eye Specialist for expert opinion. The injured was finally examined at Department of Ophthalmology (Unit 2), Sir Ganga Ram Hospital, New Delhi. The doctor recorded that the injured has a history of moderate to high myopia in both eyes. The injured underwent refractive procedure for removal of glasses in both eyes 25 years back. History of retinal detachment surgery

along with cataract removal in right eye. Injured was not sure of IOL implantation in the right eye. On ophthalmological examination, the doctor found severe injury (globe perforation) in the right eye. CT-Scan was done and no fracture was found. The injured was advised for urgent eye surgery. The statement of the first informant was recorded on 26.09.2023. In the said statement, five persons including the applicants and few unknown persons were nominated. In the said statement, the role of punching on the face and causing injury on the eyes has been assigned to one person. Even in the statement of the wife of the informant, the author of the alleged injury on the eyes of the informant was not disclosed. It is contended that a vague and general role has been assigned to the applicants. The applicants have not been nominated as the principal offenders who caused the injuries on the eyes of the informant. Further, the allegations in the F.I.R. that the informant was assaulted by sharp edged weapons and, thereafter, in the statement of the injured under Section 161 Cr.P.C. that he was assaulted by punches, discredit the prosecution case. It is further contended that there is a cross version of the incident. In the alleged incident five persons from the side of the applicants also received injuries. The said injured were also examined on the same day at Manyavar Kanshiram Sanyukth Chikitsalaya and Trauma Centre, Kanpur Nagar. The first information report was also lodged, registered as Case Crime No. 0094 of 2023, P.S. Raipurwa, District- Kanpur Nagar. It is contended that the author of the injury on the eyes of the informant has not been disclosed in the F.I.R. nor in the statement of the injured and his wife. As such, there is no clarity with regard to the role of the applicants. No video footage of the incident was found by the Investigating Officer. The applicants are in jail since 29.09.2023, having no criminal history. In case they are enlarged on bail, they will not misuse the said liberty.

5. Learned A.G.A. and learned counsel for the informant have opposed the prayer for bail but could not satisfactorily dispute the aforesaid submissions from the record.

6. Having heard learned counsel for the parties and having perused the record this Court prima facie finds that five named persons are nominated in the F.I.R. The author of the injury caused on the eyes of the informant is not known. Vague and general role have been assigned to the applicants. Further, the applicants have no criminal antecedents and have remained confined for more than one month and there is no hope of early conclusion of trial, more so when no reasonable apprehension has been brought to the fore by the State

that the applicants, if enlarged on bail, would either tamper with the evidence or delay the trial or intimidate the witness, without commenting on merits of the case, I am of the opinion that the applicants are entitled to be enlarged on bail.

7. Let the applicants- **Satyendra Kumar Bajpai, Ankur Singh Rajawat @ Rishabh and Suraj Nayan Tripathi**, involved in aforesaid case be released on bail on their furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to the conditions that they:

(i) shall appear on the date fixed by the trial court;

(ii) shall not tamper with the prosecution evidence;

(iii) shall not pressurize the prosecution witnesses.

8. In case of breach of any of the above conditions, the prosecution shall be at liberty to move bail cancellation application before this Court.

Order Date :- 8.11.2023

Sachin Mishra