

Neutral Citation No. - 2023:AHC:223474

Reserved On:- 21.11.2023

Delivered On:- 24.11.2023

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47861 of 2023

Applicant :- Shiv Shankar Singh Alias Ghoorey Singh

Opposite Party :- State of U.P.

Counsel for Applicant :- Ashok Kumar Singh, Gaurav Kumar Yadav, Rajrshi Gupta, Sr. Advocate

Counsel for Opposite Party :- G.A., R. P. Singh Parihar

Hon'ble Siddharth, J.

1. Heard Sri Dilip Kumar, learned Senior counsel, assisted by Sri Ashok Kumar Singh, for the applicant; Sri I.K. Chaturvedi, learned Senior counsel assisted by Sri R.P. Singh Parihar and Sri G. N. Singh, learned AGA for the State and perused the material placed on record.

2. The instant bail application has been filed on behalf of the applicant, **Shiv Shankar Singh Alias Ghoorey Singh**, with a prayer to release him on bail in **Case Crime No. 15/2023, under Sections- 34, 302, 307, 427, 506 IPC, and Section 7 of Criminal Amendment Act and Section 30 of Arms Act, Police Station-Mehnazpur District- Azamgarh**, during pendency of trial.

3. There is allegation in the FIR that an open meeting was taking place in panchayat bhawan for allotment of housing sites where the applicant, Ex-Pradhan of the village, co-accused, Jitendra Yadav, Babbu Singh, @ Vijay Singh and Sonu Singh, were pressurizing for allotment of housing sites to ineligible persons. Thus, their attempt was protested by Pradeep Singh @ Bheem, Himanshu Singh, Sarvendu @ Munna Singh, etc., and then it is alleged that applicant fired from his weapon and hit the nephew of informant, Himanshu, on his chest, thereafter, the applicant and his associates, namely, Jitendra Yadav, Babbu Singh, and Sonu Singh made indiscriminate firing from rifles and guns causing injuries to Pradeep Singh @ Bheem, Sarvendu Singh @ Munna on their thighs. A video recording of the deceased was made wherein he disclosed the name of applicant as the person who fired on him. Subsequently, Himanshu Singh, died and FIR was registered on 24.01.2023 at 19:32 hours at about 8:00 hours of the incident when the place of incident is situated one kilometre from the police station.

4. Learned Senior counsel for the applicant has submitted that there is entry in the general diary that when the whereabouts of the deceased and injured were inquired from the informant, he replied that his nephew, Himanshu, died on the spot and his dead body was sent District Hospital, Azamgarh. Thereafter, *panchayatnama* papers were handed over to the police personnels with instructions to visit District Hospital, Azamgarh. Co-accused, Jitendra Yadav, was arrested on 25.01.2023 and on his pointing out a licensed DBBL gun was recovered. Thereafter, countrymade pistol was also shown to have recovered from him wrapped in a polythene bag. Applicant and co-accused, Babbu Singh, were also arrested on the same day and a licensed rifle was shown to have recovered from co-accused, Babbu Singh, which was licensed in the name of the applicant. On the same day, the statement of informant was again recorded who stated that he was informed about the incident by Ashok Singh who informed that his nephew, Himanshu Singh, is being brought to Singh Medical Varanasi, where he was declared dead. The two injured who also suffered injuries on their thighs, gave their written statements to investigating officer. Learned Senior counsel for applicant has further submitted that in the post mortem report of the deceased a fire arm wound entry size 7*4cm on right side of chest with blackening and inverted margins were found. The second injury were 7 exit fire arms exit wounds with margins averted. He has submitted that injuries show that they have been caused by 12 bore DBBL gun having number of pellets in the cartridges. The 12 bore DBBL gun belonged to co-accused, Jitendra Yadav, who admitted using the same. There is no other injury on the person of the deceased except one noted above. He has further submitted that applicant is Ex-Pradhan of the village. Hence he has been falsely implicated in this case. He is aged about 67 years and has criminal history of 29 cases explained in paragraph 36 of the bail application. He has pointed out that there is one case of 1984 under Section 302, 307, 120B IPC wherein the applicant has been acquitted. The other case of major offence is the present case. All the other cases are of minor offences and except three cases, he has been acquitted in all the cases. The applicant is languishing in jail since 25.01.2023. The trial in the aforesaid case is not likely to be concluded in near future.

5. Learned A.G.A. and learned counsel for informant have vehemently opposed the prayer for bail of the applicant and they have pointed out to the statements of the injured, Pradeep Singh, wherein he has assigned the role to applicant of causing fire arm injury to the deceased. They have further stated that the deceased and the two other injured, namely, Pradeep Singh and Sarvendu, were taken to the Mehnazpur Hospital where the deceased, Himanshu, died. They have stated that there is clear allegation against the applicant. In case the applicant is released on bail he will again indulge in similar activities and will misuse the liberty of bail.

6. After hearing the rival contentions, this Court finds that although the main role of firing has been assigned to the applicant in causing the murder of the deceased, Himanshu, but there is no reply submitted by learned AGA or the counsel for informant as to where the deceased died out of three places mentioned by informant and the injured i.e., District Hospital, Azamgarh, Singh Medical, Varanasi or Mehnazpur Hospital Azamgarh. No explanation has been given how the 12 bore DBBL gun allegedly used in the crime which was in the name of co-accused, Jitendra Yadav, was used by the applicant in commission of the alleged crime. The gun shot injuries found on the person of the deceased appear to have been caused by 12 bore DBBL gun only. The applicant was having license of a rifle. It is a case of single shot. There is one entry and one exit wound only found on the person of the deceased. Allegations of indiscriminate firing has been made in the FIR against the applicant and three other co-accused. It cannot be conclusively said that it was the applicant, who caused the fatal shot to the deceased. The informant not eye witness of the incident. There is possibility of his false implication of applicant for political reasons too.

7. Having considered the submissions of the parties noted above, finding force in the submissions made by the learned counsel for the applicant, keeping in view the uncertainty regarding conclusion of trial; one sided investigation by police, ignoring the case of accused side; applicant being under-trial having fundamental right to speedy trial; larger mandate of the Article 21 of the Constitution of India, considering the dictum of Apex Court in the case of ***Satendra Kumar Antil Vs. C.B.I. & Another, passed in S.L.P.(Crl.) No. 5191 of 2021, judgement dated 11.7.2022*** and considering 5-6 times overcrowding in jails over and above their capacity by under trials and without expressing any opinion on the merits of the case, let the applicant involved in the aforesaid 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 with the following conditions that :-

(i) The applicant shall not tamper with the evidence or threaten the witnesses.

(ii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in Court. In case of default of this condition, it shall be open for the Trial Court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(iii) The applicant shall remain present before the Trial Court on each date fixed, either personally or as directed by the Court. In case of his absence, without sufficient cause, the Trial Court may proceed against him under Section 229-A of the Indian Penal Code.

(iv) In case the applicant misuse the liberty of bail during trial and in order to secure his presence, proclamation under Section 82 Cr.P.C. is issued and the applicants fail to appear before the Court on the date fixed in such proclamation then the Trial Court shall initiate proceedings against him in accordance with law under Section 174-A of the Indian Penal Code.

(v) The applicant shall remain present in person before the Trial Court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) 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.

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

9. Identity and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

10. The court below is directed to conclude the trial against the applicant, as expeditiously as possible, preferably within a period of one year.

11. Registrar(Compliance) is directed to communicate this order to the concerned court below within ten days.

Order Date :- 24.11.2023

Abhishek