

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48623 of 2023

Applicant :- Kaif

Opposite Party :- State of U.P.

Counsel for Applicant :- Abhishek Kumar Jaiswal, Sumit Daga

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal, J.

1. List revised.
2. Heard Sri Abhishek Kumar Jaiswal, learned counsel for the applicant and Sri Birendra Pratap Singh, learned counsel for the State and perused the material on record.
3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant- **Kaif**, seeking enlargement on bail during trial in connection with Case Crime No. 238 of 2023, under Sections 147, 148, 149 & 302 I.P.C., Police Station Kotwali Mandi, District Saharanpur.
4. The first information report of the present case was lodged on 01.08.2023 by Jabrej @ Jabar against Wasim @ Joan Modal and his associates alleging therein that his brother Shalu Alam was running a shop near the medical store where around 04 days back there was some dispute with regards to purchase of chicken with Wasim @ Joan Modal who by extending threats went away. On 01.08.2023 at about 10.30 p.m. Wasim @ Joan Modal along with his associates came there and fired upon his brother who received injuries. On hearing the sound of firing, the informant reached the place along with other persons of locality and on their shout, the accused persons ran away. He took his brother to the hospital where he was declared dead.
5. Learned counsel for the applicant argued that the applicant is not named in the first information report. His name has surfaced in the third statement of the first informant recorded u/s 161 Cr.P.C. on 19.08.2023. It is argued that there is an evidence of CCTV footage also in which the co-accused Wasim @ Joan Modal is seen with a countrymade pistol whereas the applicant along with other persons are seen to be present with him. It is argued that there is no overt act assigned to the applicant. It is argued that the postmortem examination report of the deceased shows that he has received a single gun shot wound of entry although with one red contusion, an abrasion and a multiple abrasion but the same appear to have been received by him due to fall. The cause of death of the deceased was opined as shock and haemorrhage as a result of antemortem firearm injury. It is argued that there is no recovery of any incriminating material either from the possession or on the pointing out of the applicant. It is argued that co-accused Bismil has been granted bail by a co-ordinate Bench of this Court vide order

dated 18.10.2023 passed in Criminal Misc. Bail Application No. 44396 of 2023, the copy of the said order is annexed as Annexure-10 to the affidavit. It is argued that charge-sheet in the matter has been submitted and as such there are no chances of the applicant tampering with the evidence or threatening the witnesses. The applicant has no criminal history as stated in para 24 of the affidavit and is in jail since 06.09.2023.

6. *Per contra*, learned counsel for the State opposed the prayer for bail but could not dispute the arguments as aforesaid.

7. After having heard learned counsel for the parties and perusing the record, it is evident that the applicant is not named in the first information report. His name has surfaced for the first time in the matter after 18 days in the third statement of the first informant recorded u/s 161 Cr.P.C. There is a CCTV footage in which although the applicant is stated to be present but no overt act has been assigned to him therein. Co-accused Wasim @ Joan Modal is stated to be armed with a countrymade pistol and is stated to have fired upon the deceased.

The case of the applicant is distinguishable with that of co-accused Wasim @ Joan Modal.

8. Looking to the facts and circumstances of this case, the nature of evidence and also the absence of any convincing material to indicate the possibility of tampering with the evidence, this Court is of the view that the applicant may be enlarged on bail.

9. Let the applicant- **Kaif**, be released on bail in the aforesaid case crime number on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice:-

i) The applicant will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

ii) The applicant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the date 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.

(iv) The applicant will not misuse the liberty of bail in any manner whatsoever. In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under section 82 Cr.P.C., may be issued and if applicant fails 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 I.P.C.

(v) 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 and the trial court may proceed against him under Section 229-A IPC.

(vi) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicant.

10. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail and send the applicant to prison.

11. The bail application is **allowed**.

Order Date :- 16.11.2023

AS Rathore

(Samit Gopal,J.)