

Court No. - 77

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 50835 of 2023

Applicant :- Bhuvnendra And Another

Opposite Party :- State of U.P.

Counsel for Applicant :- Ashutosh Upadhyay

Counsel for Opposite Party :- G.A.

Hon'ble Mrs. Renu Agarwal,J.

1. Heard learned counsel for the applicants, learned A.G.A. for the State and perused the record.

2. The present first bail application has been filed on behalf of the applicants in Case Crime No. 397 of 2023 under Sections 147, 148, 307, 323, 504, 506 I.P.C. and Section 27/30 Arms Act, Police Station-Bisanda, District Banda with the prayer to enlarge them on bail.

3. Learned counsel for the accused-applicants submitted that the applicants are innocent and have been falsely implicated in the instant case due to malafide intentions. Allegations as per the F.I.R. is that the co-accused fired gun shot with his licensed pistol upon the complainant which missed the complainant and when the complainant was on his way to police station for lodging a complaint, accused-applicant abused the complainant and also assaulted him with lathi and danda with intention to kill him. Allegation levelled against the present applicants is of firing a gunshot in air. It is submitted that no firearm injury is found on the body of the complainant and the injuries found are simple in nature and caused by hard and blunt object. It is further submitted that criminal history of three cases have been shown against the applicants, in case crime No. 9 of 2006, only applicant No. 1 is made accused and he has been acquitted of the charges vide order dated 31.08.2009 passed by the court below itself, in case crime No. 17 of 2020 both the applicants are not charge-sheeted. It is submitted that two cross N.C.R.s have been registered from both sides, in which no investigation has been conducted and on the basis of

compromise the case has been closed. It is next contended that applicant no. 2 has been enlarged on bail in case crime no. 460 of 2022, by the police after taking bond under section 41(A) Cr.P.C. The applicants are languishing in jail since 17.09.2023 having no other criminal history, apart from the three cases which are explained in paragraph Nos. 16, 17 and 18 to the affidavit filed in support of the bail application, there is no chance to the applicants fleeing from the jurisdiction of this Court, and if they are granted the liberty of bail they will not misuse the same and they are ready to furnish their sufficient sureties, bonds and personal bonds and shall co-operate in the trial.

4. On the other hand, learned AGA has opposed the prayer of bail but could not controvert the aforesaid arguments as advanced by learned counsel for the applicants.

5. Considering the fact that no firearm injury is found on the body of the complainant and the injuries found are simple in nature and caused by hard and blunt object, allegation levelled against the present applicants is of firing a gunshot in air, applicants are languishing in jail since 17.09.2023, criminal history of three cases is well explained, there is no apprehension of being fleeing away from the jurisdiction of this Court or tampering with the evidence and without expressing any opinion on the merits of the case, accused-applicants are liable to be released on bail.

6. Let applicants **Bhuvnendra and Bhanu @ Bhanu Pratap** be released on bail in the above case crime number and on their furnishing a personal bond and two sureties each in the like amount to the satisfaction of Court concerned with the following conditions :-

(i) The applicants shall file an undertaking to the effect that they 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.

(ii) The applicants shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of their absence, without sufficient cause, the trial court may proceed against them under Section 229-A of the Indian Penal Code.

(iii) In case, the applicants misuses the liberty of bail during trial and in order to secure their 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 them, in accordance with law, under Section 174-A of the Indian Penal Code.

(iv) The applicants 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 applicants are 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 them in accordance with law.

(v) The applicants shall also furnish an undertaking from the sureties that the properties (movable/immovable) which are the basis of accepting the surety, shall not be disposed of by them till the conclusion of trial.

(vi) The applicants shall also give an undertaking to the effect that they will not change their address without prior intimation to the trial court concerned.

(Renu Agarwal,J.)

Order Date :- 28.11.2023
Vikram