

Neutral Citation No. - 2023:AHC:223081

Reserved On:- 20.11.2023

Delivered On:- 24.11.2023

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 58139 of 2022

Applicant :- Shiv Tiwari @ Ashutosh Tripathi

Opposite Party :- State of U.P.

Counsel for Applicant :- Desh Ratan Chaudhary

Counsel for Opposite Party :- G.A.

Hon'ble Siddharth, J.

1. This matter has been placed before this Court by way of nomination by the order dated 02.11.2023 passed by Hon'ble The Chief Justice.
2. Heard Sri R.B. Sahai, Sri Ashwani Tripathi and Sri V.K. Rai, learned counsels for the applicant; Sri Roopak Chaubey, learned counsel for the informant and learned A.G.A for the State.
3. The instant bail application has been filed on behalf of the applicant, Shiv Tiwari @ Ashutosh Tripathi, with a prayer to release him on bail in Special Sessions Trial No. 1263 of 2020 arising out of Case Crime No. 192 of 2020, under Sections- 147, 148, 149, 332, 353, 333, 307, 302, 396, 412, 120-B, 34, 504, 506 IPC and Section 7 of Criminal Law Amendment Act and Section 3/4 of Explosive Substances Act, Police Station- Chaubeypur, District- Kanpur Nagar.
4. The first information report of this incident was lodged on the complaint of S.H.O. of Police Station Chaubeypur, district Kanpur Nagar. It was alleged in the first information report that on 02.07.2020 police team headed by Sri Vinay Kumar Tiwari S.H.O. proceeded to village

Bikaru, Police Station Chaubeypur to arrest wanted accused Vikas Dubey and others after registration of Case Crime No.191 of 2020 against the accused persons, under Sections 147, 148, 504, 323, 364, 342, 307 I.P.C. and 7 Criminal Law Amendment Act along with necessary fire arms and live cartridges. At Bela crossing, they met Sri Devendra Mishra, Circle Office Bilhaur, Sri Kaushlendra Paratp Singh, S.H.O. Bithur, Sri Mahesh Yadav, S.H.O. Shivrajpur with their police teams along with fire arms and after necessary deliberations they all departed to village Bikaru for conducting raid and search of the wanted accused Vikas Dubey. It has also been further alleged that the police force saw that in front of the house of Vikas Deubey there were J.C.B. machines set up to block the road and they had to manage to reach before the gate of residence of Vikas Dubey along the left space besides the J.C.B. machines. There was sufficient dragon light and electricity lights. All of a sudden, Vikas Dubey and his associates started indiscriminate firing upon the police party and Vikas Dubey shouted loudly to say that "Poluce walo tumhari yahan dabish dene ki himmate kaise ho gai, aaj koi bachkar nahi jayega". It was also alleged that in the said confrontation of police force with accused persons, the police personnel were surrounded from different directions by the accused persons and S.I. Anoop Kumar Singh, Constable Jitendra Pal, Constable Bablu Kumar, Constable Rahul Kumar, Constable Sultan Singh, S.O. Sri Mahesh Yadav, S.I. Nebu Lal were murdered and they did not succeed to commit murder of Kaushlendra due to cover fire by the police teams. The service revolvers and fire arms of the police personnel were looted. The incident had took place in the night between 1:00 a.m. to 1:30 a.m. It has been further mentioned that there were lying scattered empty cartridges on different places and signs of incident were evident from the nearby walls and places and human blood was also there.

5. Learned counsel for the applicant submits that in the present case the informant of the case was also implicated as accused later. He had stated that the applicant was allegedly present on the roof top of the house of co-accused, Atul Dubey, which is situated in the north-eastern side of the place of incident which is approximately 450 metres away from the place of incident. The informant alleged in the FIR that he was more than 450 metres away towards south of place of incident. There is 15 feet high boundary of the house of Vikas Dubey between both the places. It was impossible for the informant to see the applicant from such a long distance who was on the roof top. In the statement of applicant, it has come that the applicant had gone to the house of his maternal uncle and co-accused, namely, Vikas Dubey and was present at the place of incident. In the C.C.T.V footage, the applicant was not seen since the evening of 02.08.2020 at 05:15 p.m till morning 03.08.2020 at 05:34 p.m. The applicant was in his house. Not a single call was made by the applicant on the mobile phone of co-accused, Vikas Dubey. The investigating officer had falsely implicated him in Case Crime No. 313 of 2023 by manipulating the mobile number of applicant wherein he was discharged. Co-accused, P.W.-1, Kunwar Pal, has stated that the applicant was firing on police party from the roof top wherein Sub-Inspector, Nebu Lal and S.H.O., Mahesh Yadav, were murdered. In his cross-examination he has stated that the applicant has only instigated the other co-accused to cause the alleged offence. The applicant is alleged to have fired from rifle and planted recovery of 315 bore country made pistol and 312 bore country made pistol were made from him. The injuries suffered by the injured were of close range caused by rifle. The testimony of informant is not credible since he himself was later found to be an accused. Trial is pending for last about two years but there is no possibility of early conclusion of trial. The applicant is in jail since 21.08.2020 and there is no one to look after his family.

6. Learned counsel for the informant states that specific role of firing upon police party from the roof of one, Atul Dubey, has been assigned to the applicant along with some other co-accused. House of co-accused, Atul Dubey, was towards east of co-accused, Vikas Dubey (since deceased). During investigation the injured witnesses have stated about the involvement of applicant in this case. Kaushlendra Pratap Singh, were part of the police party which had gone to the house of co-accused, Vikas Dubey, for his arrest. They claimed that they have seen the applicant and four other co-accused firing from roof top of co-accused, Atul Dubey. The applicant is also alleged to have instigated the other co-accused person to cause the murder of police personnels. There are many witnesses who have testified to the implication of applicant in the present case. In the statement of co-accused, Vikas Dubey, recorded after his arrest and during his transit from Madhya Pradesh to Kanpur Nagar he has named the applicant. Recovery of one SBBL gun, one embedded cartridge, one country made pistol of 315 bore, one live cartridge and two empty cartridges, were recovered from the applicant. Co-accused, namely, Ramji Kashyap, Vishnu Kashyap, Shubham Pal, Abhinav @ Tinku Tiwaria and Aman Shukla, who have been enlarged on bail were not assigned the role of firing or participation in the main crime. Co-accused, Sushil Kumar Tiwari and Arvind Trivedi @ Guddan, also had similar roles and have been enlarged on bail. The case of applicant is distinguishable. Several bail applications of co-accused, namely, K.K. Sharma, Smt. Rekha Agnihotri, Jaikant Bajpayee, Vinay Kumar Tiwari, Uma Shankar Yadav and Sanjay Singh Parihar, have already been rejected by this Court. None of the accused were named in the FIR who has been granted bail. Trial has already began and statement of P.W-1 has been recorded. The applicant has criminal history of six cases. He is not entitled to be enlarged on bail.

7. Learned A.G.A has also opposed the bail application of applicant.

8. After hearing the rival contentions, this Court finds that he is one of the named accused who has been assigned definite role. During the investigation he has been named by the witnesses and role has been assigned to him. The argument of the applicant that the distance from where alleged firing was made by the applicant and the place from where the informant saw him there is a wall in between and the deceased was too far cannot be considered at this stage. There is ample evidence against the applicant which disentitles him to be enlarged on bail at this stage.

9. The bail application is accordingly, *rejected*.

10. The trial court is directed to conclude the trial against the applicant as expeditiously as possible, preferable within a period of one year from the date of production of certified copy of this order.

Order Date :- 24.11.2023

Rohit