

Court No. - 77

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 50524 of 2023

Applicant :- Mukesh Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Anil Kumar, Mohit Singh

Counsel for Opposite Party :- G.A., Mohd. Ashraf Abbasi

Hon'ble Mrs. Renu Agarwal, J.

Second supplementary affidavit filed on behalf of applicant is taken on record.

Heard learned counsel for the applicant; learned A.G.A. and perused the record.

The present first bail application has been filed on behalf of the applicant in Case Crime No.417 of 2023, under Sections 147, 148, 149, 323, 307, 341 I.P.C. and Sections 3/25 & 27 Arms Act, Police Station Bilari, District Moradabad with the prayer to enlarge him on bail.

Learned counsel for the accused-applicant submitted that the applicant is innocent and has been falsely implicated in the instant case due to political rivalry. General role has been assigned to the applicant. No specific allegation against the applicant in the statement of the informant and other witnesses. Six named accused persons, including the applicant, are alleged to have assaulted the informant and his son Atul. Nothing has been recovered from the possession of the applicant. As per the medical report, the informant sustained three injuries and all the injuries are simple in nature. Atul sustained eighteen injuries, out of said injuries fifteen injuries were found simple in nature whereas as per the X-Ray report, three injuries sustained by the injured Atul are fracture of thumb, ring-finger and toe. Learned counsel for the applicant further submitted that co-accused, namely, Bhoora as well as Monu and Dharmendra @ Bheema have already been granted bail on 09.11.2023 and 07.12.2023 by a co-ordinate Benches of this Court in Criminal Misc. Bail Application Nos.48544 of 2023 and 52472 of 2023 respectively. The criminal history has been explained in paragraph no.19 of the affidavit filed in support of present bail application. Applicant is languishing in jail since 11.10.2023 and if he is granted the liberty of bail he will not misuse the same and he is ready to furnish his sufficient sureties,

bonds and personal bonds.

On the other hand, learned AGA as well as learned counsel for the informant opposed the prayer of bail and submitted that all the accused assaulted to the informant and his son Atul. Eighteen injuries are caused to the Atul out of which three injuries are grievous in nature. Three injuries are caused to the informant which are simple in nature. The applicant is not liable to be released on bail.

Considering the fact that there is no specific allegation against the applicant. Nothing has been recovered from the possession of the applicant. Co-accused, namely, Bhoora, Monu and Dharmendra @ Bheema have already been granted bail by a co-ordinate Benches of this Court and the case of the applicant is similar of that co-accused persons. The accused-applicant is liable to be released on bail.

Accordingly, the present bail application is allowed.

Let applicant **Mukesh Kumar** be released on bail in the above case crime number and on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of Court concerned with the following conditions :-

(i) 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.

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

(iii) 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. is issued and the 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 of the Indian Penal Code.

(iv) 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.

(v) The applicant 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 applicant shall also give an undertaking to the effect that he will not change his address without prior intimation to the trial court concerned.

Order Date :- 11.12.2023

I.A.Siddiqui