

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 52476 of 2023

Applicant :- Gautam

Opposite Party :- State of U.P.

Counsel for Applicant :- Ramesh Chandra Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

1. List revised.

2. Heard Sri Ramesh Chandra Yadav, learned counsel for the applicant, Sri Virendra 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 **Gautam**, seeking enlargement on bail during trial in connection with Case Crime No. 54 of 2021, under Sections 147, 148, 149, 302, 506, 34 I.P.C., registered at Police Station Khera Rathore, District Agra.

4. The FIR of the matter was lodged on 16.12.2021 by Ramu against 14 persons including the applicant alleging therein that on 16.12.2021 at about 11:00 am his brother Mahesh had gone to fields, the accused Gajendra @ Kallu and Ghanshyam had cut medh after which there was a quarrel between them. Mahesh went back to the house and told his family members after which accused persons went there armed with weapons and started firing due to which Dinesh and Mahesh received injuries and fell there. The accused persons then ran away. Both the said persons were found dead.

5. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that general and omnibus allegations have been levelled against 14 persons including the applicant in the FIR. It is further argued that in so far as Mahesh Singh is concerned, the doctor found a firearm wound of entry on his right side chest upper part along with two abrasions and the cause of death was because of the said injury. Further, Dinesh Singh was found to have received four firearm wounds of entry and four wounds of exit and the cause of death was due to

the said ante-mortem injuries. It is further argued that the author of the said injuries are not known. Common and general role has been assigned to all the 14 accused persons including the applicant. It is argued that co-accused Vivek, Satendra and Hukam Singh have been granted bail by co-ordinate Benches of this Court vide orders dated 31.07.2023, 09.01.2023 and 30.10.2023 passed in Crl. Misc. Bail Application Nos. 31204 of 2023 (Vivek Vs. State of U.P.), 41195 of 2022 (Satendra Vs. State of U.P.) and 39511 of 2023 (Hukam Singh Vs. State of U.P.), copy of the orders are annexed as annexure 9 to the affidavit respectively. It is argued while placing para 18 of the affidavit that there is no incriminating material has been recovered from the possession of the applicant. It is argued that the trial in the matter has started and as such there are no chances of the applicant tampering with evidence or threatening the witnesses as in the trial 12 witness out of 15 witness have been examined. He further argued that the applicant has no criminal history as stated in para 23 of the affidavit and is in jail since 23.03.2022.

6. Per contra, learned counsel for the State opposed the prayer for bail and argued that the applicant is named in the FIR along with the other accused persons and firing upon the deceased in which two persons have died. It is further argued that para 18 of the affidavit is false averment which is stated that nothing has been recovered from the possession of the applicant but a country made pistol has been recovered on the pointing out of the applicant. It is further argued that the bail of co-accused Devi Singh, Shiv Kumar and Pawan Kumar @ Bhure have been rejected by co-ordinate Benches of this Court vide orders dated 19.09.2022, 28.01.2023 and 11.04.2023 passed in Crl. Misc. Bail Application Nos. 22578 of 2022 (Devi Singh Vs. State of U.P.), 51114 of 2022 (Shiv Kumar Vs. State of U.P.) and 210 of 2023 (Pawan Kumar @ Bhure Vs. State of U.P.) respectively, copy of the orders have been produced before the Court which are taken on record. It is argued that as such the bail of the applicant be rejected.

7. After having heard learned counsels for the parties and perusing the records, it is evident that the applicant is named in the FIR. In the present matter, two persons namely Mahesh Singh and Dinesh Singh have lost their lives. Both the deceased have received firearm injuries which was the cause of death. There is a recovery of a country made pistol of 315 bore on the pointing out of the applicant but still there is a false averment in para 18 of the affidavit in support of the bail application that nothing incriminating article has been recovered from the possession of the

applicant. Co-accused Devi Singh, Shiv Kumar and Pawan Kumar @ Bhure have been denied bail by co-ordinate Benches of this Court. I do not find it a fit case for bail.

8. Considering the totality of the case in particular, nature of evidence available on record, I am not inclined to release the applicant on bail.

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

Order Date :- 7.12.2023

M. ARIF

(Samit Gopal, J.)