

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 51215 of 2023

Applicant :- Arshad @ Ashraf

Opposite Party :- State of U.P.

Counsel for Applicant :- Chandra Shekhar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

1. List revised.
2. Sri S.K. Srivastava, Advocate, filed his power today on behalf of the informant, which is taken on record.
3. Heard Sri Chandra Shekhar Mishra, learned counsel for the applicant, Sri S.K. Srivastava, learned counsel for the informant, Sri Bade Lal Bind, learned AGA for the State and perused the material on record.
4. The present bail application has been filed by the applicant Arshad alias Ashraf seeking release on bail in Case Crime No. 238 of 2023, under Sections 147, 148, 149 and 302 IPC, Police Station Kotwali Mandi, District Saharanpur during pendency of the trial.
5. FIR of the present case was lodged against co-accused Waseem @ Jon Modal and others and according to the FIR on 01.08.2023 at about 10.30 PM in the night when brother of the informant was in the shop then co-accused Waseem @ Jon Modal came along with his associates and opened fire upon the brother of the informant and when informant and others arrived at spot then he along with his associates ran away on the motorcycle.
6. Learned counsel for the applicant submitted that applicant was not named in the FIR and on the basis of CCTV footage, which was alleged to have been procured by the Investigating Officer during investigation, his name was revealed in the present matter. He further submitted that even as per prosecution, the firearm was used by co-accused Waseem @ Jon Modal and there is no allegation against the applicant that he either opened fire or caused any injury to the deceased. He further submitted that post mortem report of the deceased suggests that it is a case of single shot. It is argued that co-accused Kafeel Khan Urf Kaleem, Bismil, Samad @ Jahid Beg, Faisal and Kaif have been granted bail by coordinate Benches of this Court and by this Court vide orders dated

1.11.2023, 18.10.2023, 22.11.2023, 21.11.2023 and 16.11.2023 passed in Criminal Misc. Bail Application Nos.46057 of 2023, 44396 of 2023, 49708 of 2023, 49324 of 2023 and 48623 of 2023 respectively, copies of the said orders has been produced by learned counsel for the applicant, the same are taken on record. The applicant is in jail since 13.8.2023.

7. Per contra learned counsel for the first informant and learned counsel for the State opposed the prayer for bail.

8. After hearing the counsel for the parties and perusing the record, it is evident that the applicant was not named in the FIR. As per prosecution case, the firearm was used by co-accused Waseem @ Jon Modal. There is no allegation against the applicant regarding fire or causing any injury to the deceased. Co-accused persons have been granted bail.

9. 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.

10. Let the applicant-**Arshad alias Ashraf**, 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.

11. 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.

12. The bail application is **allowed**.

(Samit Gopal, J.)

Order Date :- 30.11.2023

Gaurav Kuls