

Court No. - 77

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 51358 of 2023

Applicant :- Sumit Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Vikas Kumar Srivastava, Sita Ram Sharma

Counsel for Opposite Party :- G.A.

Hon'ble Mrs. Renu Agarwal, J.

1. Supplementary affidavit filed today is taken on record.
2. Heard learned counsel for the applicant, learned A.G.A. and perused the record.
3. The present application under Section 439 Cr.P.C has been filed seeking bail in Case Crime No.655 of 2016 under Sections 308, 323, 504 IPC Police Station Bilhaur District Kanpur Dehat.
4. Learned counsel for the accused-applicant submitted that the applicant is innocent and has been falsely implicated in the instant case due to ulterior motive. The FIR is delayed by one month however, no plausible explanation for the delay in lodging the FIR has been given by the prosecution. Only general allegations has been levelled against the applicant and other co-accused persons. No specific allegations has been made against the present applicant. The injured has reiterated the version of FIR in his statement recorded under Section 161 Cr.P.C. No specific allegation has been levelled against the applicant in the FIR also. The accused persons are alleged to have assaulted the injured by rod and sharp edged weapons,

however, nothing as such has been recovered from the possession of the application. Medical report does not corroborate the allegations made in the FIR. The injured did not sustain any injury caused by sharp edged weapon. The injured sustained two injuries one being traumatic swelling 3cmx1cm on top of head and other being abrasion 1cm x 1 cm on the left cheek just lateral to left nostrils. It is also submitted that it is not specified in the statement of witnesses and of the injured as to who is the author of the injuries. The applicant has no criminal history apart from the instant case. However, by way of supplementary affidavit it is submitted that one case bearing case Case Crime No. 819 of 2016 Police Station Bilhaur District Kanpur Shahar has been explained in which final report has been filed. It is also submitted that the name of the applicant has been exonerated in the above mentioned case. Co-accused Harishchandra has already been enlarged on bail by co-ordinate Bench of this Court in Criminal Misc. Bail Application No17600 of 2018, vide order dated 20.07.2018. The applicant is languishing in jail since 17.11.2023, in case he is enlarged on bail, he will not misuse the liberty of bail and will cooperate in the trial proceedings.

5. On the other hand, learned AGA has opposed the prayer for bail but could not controvert the aforesaid factual matrix.

6. Considering the facts and circumstances of the case and

taking into account the nature of acquisition, the fact that there is no supporting evidence, no recovery of any incriminating weapon which was used in the offence has been made from the applicant, the fact that medical report does not corroborate the prosecution case, co-accused has already been granted bail by a co-ordinate Bench of this Court and without expressing any opinion on the merit of the case, it would be appropriate to enlarge the accused-applicant on bail.

7. The bail application is allowed.

8. Let applicant-Sumit Kumar be released on bail in the above case crime number 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.

(Renu Agarwal,J.)

Order Date :- 14.12.2023
Nadeem