

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 52075 of 2023

Applicant :- Aslam

Opposite Party :- State of U.P.

Counsel for Applicant :- Mohd. Naushad, Anjali Singh Tomer

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma, J.

1. Heard learned counsel for the applicant and Sri Neeraj Kumar Sharma, learned A.G.A. for the State-respondent.
2. The instant bail application, under Section 439 Cr.P.C., has been filed with a prayer to enlarge the applicant on bail in Case Crime No. 181 of 2023, under Section 307, 34, 411 IPC, and Section 3/25/27 of Arms Act, Police Station- Thanabhawani, District Shamli, during pendency of the trial.
3. Counsel for the applicant submits that the applicant has been falsely implicated in the instant case. It is a case of firing on the police party. In the alleged incident constable Sohit Kumar has received an injury on his left forearm. The applicant has also received a gun shot injury. The injury sustained by the police constable was on non vital part of the body and was found simple in nature. It is contended that intention of the applicant was only to evade arrest by the police and he fired only to frighten the police party. False recovery of a country made pistol and other items has been shown from the applicant. There is no independent witness to the recovery. Except the confessional statement of the applicant in police custody, there is no cogent evidence to link the applicant to the offence. It is next contended that identically placed co-accused Khalil has been granted bail by this Court vide order dated 02.08.2023 passed in Criminal Misc. Bail Application No. 31677 of 2023. The applicant claims party. The criminal history of the applicant has been explained in para 12 of the affidavit. The applicant is in jail since 02.06.2023 and in case he is enlarged on bail, he will not misuse the said liberty.
4. Learned A.G.A. has opposed the prayer for bail but could not satisfactorily dispute the aforesaid submissions from the record.
5. Having heard counsel for the parties and having perused the record, this Court prima facie finds that the injury sustained by the

police constable was on non vital part of the body and was found simple in nature. There is no independent witness to the recovery. At this stage, there is no substantive evidence against the applicant. Identically placed co-accused Khalil has been granted bail by this Court. Further, the applicant has remained confined for more than five months and after submission of the charge-sheet there is no hope of early conclusion of trial, more so when no reasonable apprehension has been brought to the fore by the State that the applicant, if enlarged on bail, would either tamper with the evidence or delay the trial or intimidate the witness, without commenting on the merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

6. Let the applicant- **Aslam**, involved in the aforesaid case be released on bail on his furnishing a personal bond and two heavy sureties each of the like amount to the satisfaction of court concerned on the following conditions that:

- i. the applicant shall not temper with the prosecution evidence;
- ii. the applicant shall not pressurize the prosecution witness;
- iii. the applicant shall appear on each and every date fixed by the trial court;
- (iv) the applicant shall not leave district without the leave of the trial court; and,
- (v) the applicant shall appear on first Sunday of every month at the Police Station concerned.

7. In case of breach of any of the above conditions, the prosecution shall be at liberty to move bail cancellation application before this Court.

Order Date :- 5.12.2023

Lbm/-