

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 53206 of 2023

Applicant :- Krishna Kumar @ Bhoora

Opposite Party :- State of U.P.

Counsel for Applicant :- Janardan Prasad Tripathi, Shashi Bhushan Tripathi

Counsel for Opposite Party :- G.A., Akhilesh Srivastava, Saksham Srivastava

Hon'ble Samit Gopal, J.

1. List revised.

2. Heard Sri Janardan Prasad Tripathi, learned counsel for the applicant, Sri Akhilesh Srivastava, learned counsel for the first informant, 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 Krishna Kumar @ Bhoora, seeking enlargement on bail during trial in connection with Case Crime No. 223 of 2023, under Sections 147, 148, 149, 323, 307, 302, 34 I.P.C., registered at Police Station Chandaus, District Aligarh.

4. Learned counsel for the applicant at the very outset submits that co-accused Ankit Chauhan and Jitesh Kumar @ Jeetu have been granted bail by different Benches of this Court vide orders dated 30.10.2023 and 16.11.2023 passed in Crl. Misc. Bail Application Nos. 45724 of 2023 (Ankit Chauhan Vs. State of U.P.) and 48651 of 2023 (Jitesh Kumar @ Jeetu Vs. State of U.P.), copy of the orders are annexed as annexure 7 to the affidavit. Further it is argued that co-accused Vivek has also been granted bail by another Bench of this Court vide order dated 30.11.2023 passed in Crl. Misc. Bail Application No. 51150 of 2023 (Vivek Vs. State of U.P.), copy of the order has been produced before the Court which is taken on record. It is further argued that the case of the applicant is identical with that of co-accused who have been granted bail and as such he claimed parity. It is further argued that the applicant has a criminal history of two cases as stated in para 26 of the affidavit and is in jail since 16.11.2023.

5. Per contra, learned counsel for the State opposed the prayer for bail but could not dispute the fact that the said three co-accused have been granted bail.

6. After having heard learned counsels for the parties and perusing the records, it is evident that the order of co-accused Ankit Chauhan has been granted bail which reads as under:-

"1. Heard Sri Anand Pati Tiwari, learned counsel for the applicant and Sri Manoj Kumar Singh, learned Brief Holder for the State-respondent.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 223 of 2023, under Sections 147, 148, 149, 323, 307, 302, 34 IPC, Police Station Chandaus, District Aligarh, during pendency of the trial in the court below.

3. FIR of the present case was lodged against ten persons (non applicant) and some unknown persons and according to the FIR when nominated accused persons and their unknown associates were fighting with each other and informant and his father intervened then they started scuffling with informant and his father and with intention to cause death, they opened fire upon the informant and his father and due to the fire opened by them father of the informant sustained fire arm injury on his chest and died.

4. Learned counsel for the applicant submitted that applicant was not named in the FIR and even when the statement of the informant was recorded under section 161 Cr.P.C. then also he did not disclose the name of the applicant. However in his statement, he stated that co-accused Sachin Saraswat caused fire arm injury to his father.

5. He further submitted that when the statements of the eye witnesses Vinay and Nitin were recorded during investigation then they although disclosed the name of the applicant but they also stated that co-accused Sachin Saraswat opened fire upon the informant and his father and due to the fire opened by him, father of the informant sustained injuries and died.

6. He further submitted that although applicant is having criminal history of two other cases but both the cases were of minor offences and his criminal history has been explained in the instant bail application.

7. He further submitted that applicant is in jail in the present matter since 19.9.2023.

8. Per contra, learned AGA opposed the prayer for bail but could not dispute the fact that applicant was neither named in the FIR nor in the statement of the informant record during investigation and his name was disclosed by two other witnesses and informant and both these witnesses attributed the role of firing to co-accused Sachin Saraswat and there is no allegation against the applicant that he either opened fire or caused any injury to the deceased.

9. I have heard learned counsel for the parties and perused the record of the case.

10. Applicant was not named in the FIR and his name was disclosed by witnesses Vinay and Nitin but from perusal of the statement of the informant and these two eye-witnesses it appears that role of causing fire arm injury has been attributed to co-accused Sachin Saraswat.

11. However, applicant is having previous criminal history of two other cases to his credit but from the perusal of the paragraph 20 of the instant bail application it appears that both the cases are of the offences punishable up to 7 years and in both the cases, till date applicant has not been arrested.

12. Further, applicant is in jail in the present case since 19.9.2023.

13. Therefore, considering the facts and circumstances of the case, discussed above, in my view, applicant is entitled to be released on bail.

14. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is allowed.

15. Let the applicant- Ankit Chauhan, be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicant shall appear before the trial court on the dates fixed, unless his personal presence is exempted.

(ii) The applicant shall not directly or indirectly, make inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or any police officer or tamper with the evidence.

(iii) The applicant shall not indulge in any criminal and anti-social activity.

16. In case of breach of any of the above condition, the prosecution will be at liberty to move an application before this Court for cancellation of the bail of the applicant.

17. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial."

7. Further, co-accused Vivek has been granted bail by another Bench of this Court which reads as under:-

"1. Heard Shri Abhishek Mayank, learned counsel for the applicant and Dr. S. B. Maurya, learned A.G.A.-I for the State-respondent.

2. The instant application has been filed seeking release of the applicants on bail in Case Crime No.223 of 2023, under Section 147, 148, 149, 323, 307, 302, 34 I.P.C., Police Station Chandaus, District Aligarh, during pendency of the trial in the court below.

3. FIR of the present case was lodged against ten persons (non applicant) and some unknown persons and according to the FIR when nominated accused persons and their unknown associates were fighting with each other and informant and his father intervened then they started scuffling with informant and his father and with intention to cause death, they opened fire upon the informant and his father and due to the fire opened by them father of the informant sustained fire arm injury on his chest and died.

4. Learned counsel for the applicant submits that applicant is not named in the F.I.R. and he was made accused during investigation after about more than a month and even as per the alleged eye-witnesses, the injury was caused to the deceased by co-accused Sachin Saraswat and no role of causing injury to the deceased has been assigned to the applicant.

5. Learned counsel for the applicant next submits that co-accused Ankit Chauhan and Jitesh Kumar @ Jeetu have already been released on bail by a Co-ordinate Bench of this Court vide orders dated 30.10.2023 and 16.11.2023 passed in Criminal Misc. Bail Application Nos.45724 of 2023 and 48651 of 2023.

6. He further submits that the case of the applicant is at par with them.

7. He next submits that applicant is in jail in the present matter since 21.09.2023.

8. Per contra, learned AGA opposed the prayer for bail and submits that apart from the present case, applicant is also having criminal history of one case of N.D.P.S. Act but could

not dispute the other argument on facts advanced by learned counsel for the applicant.

9. I have heard learned counsel for both the parties and perused the record of the case.

10. However, applicant is having criminal history of one case of N.D.P.S. Act but he was not named in the FIR and during investigation after about more than a month his name was surfaced in the present matter and even as per the prosecution, he did not cause any injury to the deceased and injury to the deceased was caused by co-accused Sachin Saraswat.

11. Further, bail application of co-accused Ankit Chauhan and Jitesh Kumar @ Jeetu have already been allowed by Co-ordinate Benches of this Court and case of applicant is at par with them and applicant is in jail in the present matter since 21.09.2023.

12. Therefore, considering the facts and circumstances of the case, discussed above, in my view, applicants is entitled to be enlarged on bail.

13. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is allowed.

14. Let the applicant- Vivek, be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicant shall appear before the trial court on the dates fixed, unless his personal presence is exempted.

(ii) The applicant shall not directly or indirectly, make inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or any police officer or tamper with the evidence.

(iii) The applicant shall not indulge in any criminal and anti-social activity.

15. In case of breach of any of the above condition, the prosecution will be at liberty to move an application before this Court for cancellation of the bail of the applicant.

16. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial."

8. Looking to the facts and circumstances of this case, the nature of evidence, considering the fact of parity 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.

9. Let the applicant **Krishna Kumar @ Bhoora**, 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.

10. 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.

11. The bail application is ***allowed***.

Order Date :- 12.12.2023

M. ARIF

(Samit Gopal, J.)