

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 2366 of 2022

Applicant :- Bal Krishna Mishra Alias Baley Satish Alias Santosh Mishra

Opposite Party :- State Of U.P. Thru Prin.Secy. Home Lucknow

Counsel for Applicant :- Sumit Kumar Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard Mr. Sumit Kumar Srivastava, learned counsel for the accused-applicant, as well as learned A.G.A. for the State and perused the record.

2. This application has been moved by the accused/applicant- **Bal Krishna Mishra alias Baley alias Satish alias Santosh Mishra** for grant of bail in Case Crime No.036 of 2016, under Sections 147, 148, 149, 302, 307, 504, 506 and 34 IPC read with Section 7 Criminal Law Amendment Act and Section 4/5 Explosive Substance Act lodged at Police Station Manikpur, District Pratapgarh, during trial.

3. Learned counsel for the accused-applicant, while drawing attention of this Court towards the FIR, submits that the whole incident narrated in the FIR with regard to genesis of the incident is highly concocted, fabricated and could not be believed and it is transpired that to conceal the real state of affairs the applicant has been made an scape-goat as he was having criminal history of many cases. It is further submitted that apart from the deceased to whom firearm injuries have been attributed no other police personnel has sustained any injury which itself throws a cloud of suspicion over the whole prosecution story. The attention of this Court has also been drawn towards the site-plan, copy of which is placed as Annexure-3 to the bail application in order to show that the story, as cooked up by the police personnel, is not possible to occur in the way as narrated. It is further submitted that no motive has been attributed to the applicant which may prompt him to commit an offence of this magnitude as according to the prosecution version of the incident the police station has been attacked by the applicant and for that a strong motive is required. The applicant is languishing in jail in this case since 06.07.2016 and still the trial is not concluded and criminal

history of the applicant has been explained in paragraph-19 of the bail application.

4. Learned A.G.A., on the other hand, submits that in a calculated manner the police station has been attacked by the applicant and other accused persons and by the assault made with fire-arms one police personnel, namely, Mahadev Prasad Mishra has sustained fire-arms injuries on his eye and died of the same. It is further submitted that apart from informant, there were many other police personnel, who were present at the police station on that point of time and they all in one voice have stated that it was the applicant and other accused persons who have opened fires towards the police station. It is vehemently submitted that having regard to manner in which the incident has been committed by the applicant and other accused person, the applicant is not entitled to be released on bail, more so, he is having criminal history of twelve cases.

5. Having heard learned counsel for the parties and perused the record, it is reflected that specific allegations have been levelled against the applicant of firing towards the police station wherein one police personnel is shown to have sustained fire-arm injuries and died subsequently. Various submissions have been raised by the learned counsel appearing for the applicant in order to show that to commit incident of such magnitude strong motive is required. The law with regard to motive is now well-settled and in cases based on direct evidence, the motive loses its significance and the instant case is based on direct evidence of so-many police personnel. It is also settled that the evidence of police personnel may not be appreciated with different principles and the same is to be appreciated having regard to its weaknesses and improbabilities. Thus, having regard to the totality of facts and circumstances of the case wherein specific role of firing has been assigned to the applicant and other accused persons and death of one police personnel has occurred due to the injuries of fire-arms sustained by him, I do not find any good ground on the basis of which the facility of bail may be extended to the applicant.

6. In result, the bail application, moved on behalf of the applicant - **al Krishna Mishra alias Baley alias Satish alias Santosh Mishra**, is hereby **rejected**.

7. Though having regard to the allegations levelled against the applicant, the applicant is not entitled to be released on bail, but keeping in view the fact that he is in jail since 06.07.2016, certain directions are required to be given. It is well-settled that an accused/under-trial who is also carrying presumption of innocence may not be permitted to remain in jail for a long-time

and, the procedure of adjudication may not be permitted to act as a punishment in itself, which could only be inflicted after holding an accused/under trial guilty.

8. Thus, for the reasons aforesaid and also keeping in view the fact that there may not be anything else important than the personal liberty to a person, the trial Court is directed to list the case at-least once in a week and on all such dates on which the case would be listed, the prosecution witnesses would be presented by the prosecution, if the same has already not been exhausted/concluded.

9. It is further directed that concerned SSP/SP shall be responsible to produce the prosecution witnesses before the trial Court on each and every date of such listing.

10. The Sessions Judge of the concerned Sessions Division is also directed to assess the progress of the instant case in the monthly meeting of the judicial officers.

11. A copy of this order be immediately sent to the trial Court through the Sessions Judge concerned as well as to the D.G. prosecution and to the SSP/SP, Pratapgarh through the Senior Registrar of this Court, for strict compliance.

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[Mohd. Faiz Alam Khan,J.]

Order Date :- 23.11.2023

MVS/-