

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 5390 of 2023

Applicant :- Pappu @ Krishnapal Yadav

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Deptt. Civil Secrett. Lko.

Counsel for Applicant :- Sumit Kumar Srivastava

Counsel for Opposite Party :- G.A., Ravindra Kumar Singh

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard Shri Sumit Kumar Srivastava, learned counsel for the accused-applicant, Shri Ravindra Kumar Singh, learned counsel appearing for the complainant/informant as well as learned A.G.A. for the State and perused the record.

2. This bail application has been moved by the accused/applicant - **Pappu @ Krishnapal Yadav** for grant of bail, in Case Crime No.0134 of 2022, under Section 302 I.P.C., Police Station Mohammadpur Khala, District Barabanki, during trial.

3. Learned counsel for the accused-applicant while pressing the bail application submits that the applicant has been falsely implicated in this case and he has not committed any offence as claimed by the prosecution.

4. It is vehemently submitted that the informant of the instant case is having enmity with the applicant with regard to measurements of agricultural plot and this has also been acknowledged by the informant in the F.I.R. and the name of the applicant has surfaced in the F.I.R. only on account of this enmity and in the F.I.R. only an apprehension/suspicion has been shown.

5. It is further submitted that after many days of the incident statement of one Prem Kumar was recorded, who claimed himself to be an eye witness of the crime while he was also the panch witness of the inquest and had not stated anything with regard to the role of the applicant or any other accused person. It is vehemently submitted that statement of this witness namely Prem Kumar could not be believed as the same is after thought and is an improvement and after drawing inquest he also absconded and could not be found by the investigating officer for the purpose of recording of his statement.

6. It is also submitted that during the course of investigation, various witnesses have filed their affidavits probably at the instance of the informant and they have also not alleged any imputation against the applicant and when the investigation was transferred to the Crime Branch, Ayodhya/Faizabad and after recording of additional statement of the witness Prem Kumar, charge sheet has been filed without there being any sufficient evidence or material. There is no cogent material or evidence collected by the investigating officer against the applicant.

7. It is further submitted that similarly placed co-accused persons of the alleged crime, namely, Amresh Yadav and Dileep Yadav have been released on bail by the Coordinate Benches of this Court, vide orders dated 12.04.2023 passed in Criminal Misc. Bail Application Nos.2901 of 2023 and 2718 of 2023, respectively.

8. It is next submitted that the applicant is in jail in this case since 09.01.2023. Four cases are shown against the applicant as criminal history and three of such cases have been explained in para-3 of the supplementary affidavit dated 18.04.2023 and remaining one has been explained in para 37 of the rejoinder affidavit. There is no apprehension that after being released on bail he may flee from the course of law or may otherwise misuse the liberty.

9. Learned A.G.A. for the State vehemently opposes the prayer of bail of the applicant on the ground that the applicant has committed heinous offence and having regard to the manner in which the crime has been committed, he is not entitled to be released on bail.

10. Shri Ravindra Kumar Singh, learned counsel appearing for the complainant/informant vehemently opposes the prayer of bail of the applicant on the ground that the first investigating officer was collided with the accused persons and he was not conducting the investigation in fair manner that is why the investigation was transferred to the Crime Branch, Ayodhya and it is thereafter the statement of witness Prem Kumar was recorded as the witness Prem Kumar was being harassed by the first investigating officer of the Police Station Mohammadpur Khala, District Barabanki.

11. It is also submitted that the incident has been seen by the witness Prem Kumar and the role of firing with a pistol has also been assigned to the instant applicant. Thus the role of applicant is distinguishable from the role of other accused persons, who have been granted bail and having regard to the manner in which the crime has been committed, the applicant is not

entitled to be released on bail.

12. Having heard learned counsel for the parties and having perused the record, it is evident that name of the applicant and other accused persons was surfaced in the F.I.R. lodged by the informant on the basis of suspicion as there was a long standing enmity between the informant and accused persons pertaining to measurement of agricultural plot. Witness Prem Kumar was also a panch witness of the inquest, which was drawn on 07.04.2022 and his opinion with regard to the death of the deceased was that deceased had died on account of injuries sustained by him. It is after a month i.e. on 08.05.2022 statement of witness Prem Kumar was recorded by the investigating officer, wherein for the first time witness Prem Kumar stated to have seen the incident and the role of catching hold was assigned to co-accused Amresh and Dileep, who have already been granted bail while the role of assault with some weapon has been assigned to co-accused Tillu, however, the role of firing with country-made pistol has been assigned to the instant applicant.

13. Significantly an application appears to have been moved by the informant on 24.04.2022, a copy of which has been placed on record as Annexure No.14 to the bail application and the application is addressed to the Chief Minister requesting that the matter be fairly investigated. Various allegations have been levelled in this application with regard to the role of the then Station House Officer of Police Station Mohammadpur Khala, District Barabanki and thus it prima facie appears that when the investigation was transferred to the Crime Branch, Ayodhya, statement as well as additional statement of the witness Prem Kumar was recorded by the investigating officer as well as by the magistrate under Section 164 Cr.P.C. Postmortem report of the deceased would reveal that six injuries are shown to have been sustained by the deceased including a firearm wound and 22 metallic pellets were also recovered from the site of the injuries and blackening and tattooing was also found. Thus prima facie, statement of the star witness Prem Kumar is corroborated by the medical evidence. Apart from witness Prem Kumar, investigating officer recorded the statements of Ram Sanwale and Mangal Yadav, who have claimed to be present at the Tilak function of the maternal grand son of Satrohan and also claimed to have witnessed the applicant and co-accused Tillu, Dileep and Amresh going after the deceased and also hearing them saying that they have got an opportunity to eliminate him (deceased).

14. Thus having regard to all the facts and circumstances of this case specially the circumstance that the investigation of this

case was transferred on account of allegations that the first S.H.O. of the concerned police station was having collusion with the accused persons and the role of firing has been specifically assigned to the instant applicant along with role of assault to co-accused Tillu and the injury of firearm has also been found on the person of the deceased, I do not find any good ground to release the applicant on bail. Thus the bail application moved on behalf of applicant - **Pappu @ Krishnapal Yadav** is hereby **rejected**.

15. However, the trial court is directed to proceed with the trial keeping in view the provisions as contained under Section 309 Cr.P.C. and make all out efforts to conclude the same within one year from today. It will be open for the applicant to approach this Court again after recording of the evidence of all the witnesses of fact.

16. Observations made herein-above by this court are only for the purpose of disposal of this bail application and shall not be construed as an expression of this Court on the merits of the case.

17. Office is directed to immediately send a copy of the instant order to the trial court concerned through the Sessions Judge concerned for strict compliance.

Order Date :- 6.11.2023

Anupam S/-