

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 9376 of 2022

Applicant :- Rahul Alias Monu Tiwari S/O Triveni Prasad Tiwari (Second Bail)

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

Counsel for Applicant :- Alok Kumar Tiwari

Counsel for Opposite Party :- G.A., Sheo Prakash Singh

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Shri Akhilesh Chandra Shukla, learned counsel for the applicant, Shri Sheo Prakash Singh, learned counsel for the informant/complainant as well as learned A.G.A. for the State and perused the record.

2. This second bail application has been moved by the accused/applicant- **Rahul Alias Monu Tiwari**, for grant of bail, in Case Crime No.406 of 2020, under Sections 147, 148, 149, 302, 307, 188, 120-B I.P.C. and Section 27/30 Arms Act, Police Station Kotwali City, District Pratapgarh, 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 further submitted that in the F.I.R., which has been lodged by the informant Laxman Prasad Pandey (injured) against 10 named accused persons including applicant and 2-3 other unknown persons, role of only exhortation has been assigned to the instant applicant and the F.I.R. would only suggest that the instant applicant was only present at the spot, when the incident had allegedly taken place and specific role of firing with specific firearms have been assigned to other co-accused persons.

5. It is further submitted that neither in the F.I.R. nor in the statement of the prosecution witnesses including informant Laxman Prasad Pandey and Surendra Tiwari @ Shubhendra

Mani Tiwari, no specific firearm has been assigned to the instant applicant, however, general role of firing has been assigned to all the accused persons and even in the statement of the prosecution witnesses, who have been testified so far before the trial court, general role of firing with firearms have been assigned to all the accused persons and no specific role or overact has been assigned to the applicant.

6. It is vehemently submitted that co-accused persons namely Ravi Singh @ Amit Pratap Singh, Ashish Kumar Pal, Chandrabhal Tripathi, Anand Tiwari, Ravi Mishra and Amit Raja Alias Amit Kumar Gaur, to whom also the role of firing has been assigned by the informant and prosecution witnesses, have been granted bail by the Coordinate Benches of this Court and by this Court, vide orders dated 26.09.2022, 19.12.2022, 28.04.2023, 25.04.2023, 18.05.2023 and order dated 26.09.2023 passed in Criminal Misc. Bail Application Nos. 5167 of 2022, 14106 of 2022, 11617 of 2022, 4795 of 2023, 6057 of 2023 and 10014 of 2023, respectively and the role of the instant applicant is identical to them and thus on the basis of principle of parity the instant applicant is also entitled to be released on bail.

7. It is next submitted that the applicant is in jail in this case since 27.01.2022 without any criminal history and though it has been directed to hold the trial on day to day basis but the same has still not completed and in all likelihood the trial is not going to conclude in near future as there are many witnesses cited in the charge sheet and majority of the prosecution witnesses have been examined before the trial court, the applicant would not be in a position to influence any of the prosecution witness and there is no apprehension either that after being released on bail he may flee from the course of law or may otherwise misuse the liberty.

8. Learned A.G.A. appearing for the State on the other hand submits that the offence has been committed in a calculated manner and in pursuance of the conspiracy and premeditated plan of all the accused persons one innocent person has been done to death and two other have been injured in discriminating firing made by the applicant and other co-accused persons and in the F.I.R. as well as in the statement of the prosecution witnesses including those, whose statement have been recorded before the trial court, the role of firing has also been assigned to

the instant applicant. Firearm injuries have also been found on the person of the deceased and thus having regard to the nature of evidence available, the applicant is not entitled to be released on bail.

9. Shri Sheo Prakash Singh, learned counsel for the informant/complainant submits that the role of the applicant is specific in the F.I.R. as well as in the statement of the witnesses recorded by the investigating officer as well as before the trial court and he has also opened gunshot fire towards the deceased and the injured persons, which has resulted in the death of one person and injuries to the two other persons and the manner, in which the incident has been caused, had created an environment of fear and terror and the contention of learned counsel for the applicant that no specific role has been assigned to the instant applicant is patently false.

10. It is further submitted that the bail applications of the co-accused Sarvesh Tiwari @ Saheb Tiwari, Aditya Singh @ Major and the bail applications of another co-accused person namely Ambrish Mishra and Vinod Kumar Yadav have been rejected by Coordinate Benches of this Court and by this Court, against the rejection of bail application of accused Ambrish Mishra, he had approached Hon'ble Supreme Court, however, his Special Leave Petition was dismissed by the Hon'ble Apex Court on 12.12.2022 passed in Special Leave Petition (Criminal) Diary No.(s)33002 of 2022.

11. It is also submitted that first bail application of the co-accused Anand Tiwari has been rejected by a Coordinate Bench of this Court on 28.09.2022 and second bail application has been allowed only on the basis of his medical condition and not on merits and bail application of co-accused Ravi Singh @ Amit Pratap Singh was granted by a Coordinate Bench of this Court on the basis of prima facie establishment of plea of *alibi* after taking into consideration the CCTV footage of the H.D.F.C. Bank and the statement of the Manager of the said Bank, wherein it is stated that the co-accused Aditya Singh @ Major was present at the relevant point of time in the Bank while another co-accused persons namely Chandrabhal Tripathi and Ashish Kumar Pal were granted bail as they were not named in the F.I.R. and the role of co-accused Amit Raja was only of exhortation while the role of snatching the pistol of the

deceased and of firing has been assigned to the applicant, thus there is no parity of applicant with those co-accused persons, who have been granted bail by Coordinate Benches of this Court.

12. Lastly it is submitted that earlier Coordinate Benches of this Court had granted facility of bail to the co-accused Anjani Kumar Shukla, applicant, Rahul @ Monu Tiwari, Raj Kumar Maurya, however, on being challenged before Hon'ble Supreme Court the facility of bail granted by Coordinate Benches to the applicant and other accused persons was cancelled and the said order has been reported in AIR 2022 SC 510; Laxman Prasad Pandey Vs. State of Uttar Pradesh. Thus the applicant, who is having direct role of firing towards the deceased and the injured persons is not entitled to be released on bail.

13. Having heard learned counsel for the parties and having perused the record, it is evident that in the F.I.R. as well as in the statement of the prosecution witnesses including injured witnesses the role of firing has been assigned to all the accused persons named in the F.I.R., including instant applicant, however, in the F.I.R. as well as in the statement of the prosecution witnesses firing with specific weapons have been assigned to certain specific accused persons. The prosecution witnesses, who have been examined before the trial court, have also taken the name of the instant applicant as the person, who had opened gunshot fire on the deceased and injured persons, in the incident. Postmortem report of the deceased would sufficiently demonstrate that he had sustained firearm injuries and it is on the basis of these injuries he had died. Thus the role of the instant applicant in the incident is stated to be of catching hold the deceased and also of snatching his pistol and also of opening gunshot fire in the statement of the prosecution witnesses recorded by the investigating officer as well as before the trial court and is prima facie corroborated by the medical evidence.

14. Coming to the point of parity of the instant applicant with other accused persons who have been granted bail by coordinate benches of this Court, which has been raised before this Court with considerable force by learned counsel for the applicant it is transpired that the instant applicant is claiming parity with co-accused Amit Raja, Ravi Singh, Ravi Mishra,

Chandrabhal Tripathi, Ashish Kumar Pal and Anand Tiwari, who have been granted bail by Coordinate Benches of this Court. This Court is deliberately avoiding the discussion pertaining to the co-accused persons, whose bail applications have been rejected by coordinate Benches of this Court and such order has also been approved by Hon'ble Supreme Court as there may not be any parity so far as rejection of the bail applications is concerned. But it is an admitted fact that the bail granted to the applicant by a co-ordinate Bench of this Court has been cancelled by Hon'ble Supreme Court. Perusal of bail orders pertaining to Co-accused persons with whom parity has been claimed would reveal that Co-accused Ravi Singh @ Amit Pratap Singh has been granted bail as his plea of *alibi* was prima facie substantiated by the CCTV footage and the statement of the Bank Manager, where he was allegedly found at the time of incident. The bail application of co-accused Ashish Kumar Pal and Chandrabhal Tripathi was granted as they were not named in the F.I.R. and thus their role was distinguishable from the role of instant applicant. Co-accused Anand Tiwari has been granted bail by Coordinate Bench only on account of his medical condition. So far as the bail of co-accused Ravi Mishra is concerned the same has been granted only on the basis that co-accused Anand Tiwari and Ashish Kumar Pal have been granted bail, without discussing the merits of the case, however, as stated earlier co-accused Anand Tiwari was granted bail only on account of his medical condition and Ashish Kumar Pal was not named in the F.I.R. The role of Amit Raja @ Amit Kumar Gaur is also distinct, as role of only catching hold and of exhortation has been attributed to him, while the role of not only catching hold but also of exhortation and snatching the licensed pistol from the deceased has been levelled against applicant. Witness Subhash Saini in his statement under Section 161 Cr.P.C. and P.W.-2/Shubhender Mani recorded before the Court below has taken the name of the applicant as the one who was firing gun shots. A country made pistol has also been recovered on the pointing of the applicant and the bail granted earlier to the applicant has been cancelled by Hon'ble Supreme Court and there appears no change in circumstances since then.

15. Keeping in view all the facts and circumstances of the case and also the fact that the trial before the trial court is proceeding

on day to day basis and statements of many prosecution witnesses have been recorded and release of the applicant at this crucial stage of the trial may be detrimental for the fair trial and also the fact that the role of the applicant is not at par with those, who have been granted bail, I do not find any good ground to release the applicant on bail. Thus the bail application moved on behalf of applicant- **Rahul Alias Monu Tiwari** is, hereby, **rejected**.

16. The trial court is however directed to expedite the trial without granting unnecessary adjournments to either side.

17. 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.

18. Office is directed to immediately send a copy of the instant order to the trial court concerned for compliance.

Order Date :- 1.11.2023

Praveen