

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10231 of 2022

Applicant :- Aditya Singh

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

Counsel for Applicant :- Sandeep Yadav, Naved Ali

Counsel for Opposite Party :- G.A., Firoz Ahmad Khan

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Shri Naved Ali, learned counsel for the applicant, Ms. Rani Singh, learned counsel representing the State as well as Shri Anas Siddiqui, learned Advocate holding brief of Shri Firoz Ahmad Khan, learned counsel for the informant/complainant and perused the record.

2. This bail application has been moved by the accused/applicant - **Aditya Singh** for grant of bail, in Case Crime No.244 of 2019, under Sections 147, 148, 149, 302 I.P.C., Police Station Maharajganj, District Ayodhya, 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 F.I.R. of this case has been lodged with considerable delay of eight hours and the same has not been explained and interestingly the information of the death of the deceased to the concerned police station has been given by a ward-boy and even after getting information of the death of the deceased, inquest report was not drawn and the same was drawn only when F.I.R. was lodged and it shows the connivance of the local police with the informant of the instant case and he is influential political figure of the area and blind murder has been attributed to the instant applicant.

5. It is also submitted that the star witness of the crime was the owner of the gym Sandeep Singh, however, he has not supported the version of the prosecution before the trial court when he was examined as P.W.-4 and also disowned his statement recorded under Section 161 Cr.P.C. and further stated that he had not seen any person firing on the deceased.

6. It is further submitted that the role of firing was assigned to the instant applicant Aditya Singh and co-accused Abhishek Singh as well as to co-accused Bheem Singh and the bail application of Bheem Singh has been allowed by this Court vide order dated 03.08.2022 passed in Criminal Misc. Bail Application No.9215 of 2021.

7. It is also submitted that no incriminating article has been recovered from the applicant, however, at the time of his alleged arrest, three empty cartridges along with country-made pistol is shown to have been recovered, however, the same may not be attributed to the commission of crime in absence of disclosure statement to this effect made by the applicant. Learned counsel for the applicant has relied on the law laid down by Hon'ble Supreme Court in ***Manish Sisodia Vs. Central Bureau of Investigation***; 2023 SCC OnLine SC 1393.

8. It is vehemently submitted that till now only five prosecution witnesses have been testified before the trial court and having regard to the pace with which the trial is going on before the trial court, the same is not expected to conclude in near future. Applicant is in jail in this case since 20.07.2019. Criminal history of three cases has been adequately explained and the charge sheet in this case has already been filed and 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 role of the instant applicant is distinguishable from the role of other co-accused persons and co-accused Bheem Singh, who have been granted bail by this Court as well as by Coordinate Benches of this Court as the applicant was named in the F.I.R. and specific role of assault with firearm has been assigned to him while co-accused Bheem Singh with whom parity has been claimed, he was not named in the F.I.R. and was subsequently identified by one witness Sandeep Singh, who has turned hostile and having regard to the manner in which the crime has been committed, he is not entitled to be released on bail.

10. Shri Anas Siddiqui, learned Advocate holding brief of Shri Firoz Ahmad Khan, learned counsel for the informant/complainant vehemently submits that the applicant is not entitled to be released on bail as he is the person, to whom role of firing with country-made pistol has been assigned and in the postmortem report of the deceased firearm injuries have been found and more so when applicant is having criminal history of three cases.

11. Having heard learned counsel for the parties and having perused the record, it is evident that this Court as well as Coordinate Benches of this Court have granted the facility of bail to co-accused persons namely Yogendra Pratap Singh @ Shalu, Pulkit Singh @ Nitesh Singh and Karan @ Digvijay Singh vide orders dated 22.02.2021 passed in Criminal Misc. Bail Application No.11575 of 2019, 11581 of 2019 and 11798 of 2019, respectively. The first bail application of co-accused Bheem Singh was rejected by this Court vide order dated 22.02.2021 passed in Criminal Misc. Bail Application No.590 of 2020, however, subsequently his second bail application was allowed by this Court vide order dated 03.08.2022 passed in Criminal Misc. Bail Application No.9215 of 2021.

12. It is reflected that F.I.R. of this case was lodged by the informant Ram Sagar Yadav, who had claimed himself to be an eye witness of the crime and he had assigned the role of dragging the deceased to all the accused persons named in the F.I.R., but had categorically stated that it was the applicant Aditya Singh and co-accused Abhishek Singh, who had fired on the deceased with country-made pistol. On 18.07.2019, applicant Aditya Singh and co-accused Abhishek Singh were shown to have been arrested and have made confession to the effect that they had deputed co-accused Karan @ Digvijay Singh to inform about the departure of the deceased from gym of Sandeep Singh and it was on his information co-accused Yogendra Pratap Singh @ Shalu and Pulkit Singh @ Nitesh Singh had obstructed the deceased and made him fallen from his motorcycle and thereafter the applicant Aditya Singh and co-accused Abhishek Singh are stated to have fired on the deceased and killed him.

13. The name of the co-accused Bheem Singh has emerged in the confessional statements of the instant applicant as well as of co-accused Abhishek Singh. From the possession of the applicant three empty cartridges along with country-made pistol has been recovered, however, the country-made pistol is not stated to have been used in the commission of crime. The witness Sandeep Singh, who has been testified before the trial court as P.W.-4, in his statement recorded under Section 161 Cr.P.C. as well as in his additional statement had imputed the role of firing to the applicant Aditya Singh and co-accused Abhishek Singh and Bheem Singh and the role of exhortation has been assigned to co-accused Yogendra Pratap Singh @ Shalu and Pulkit Singh @ Nitesh Singh. A country-made pistol and a motorcycle are shown to have been recovered from the possession of co-accused Bheem Singh and it is shown that the said motorcycle has been released in favour of the mother of the applicant.

14. The statement of the informant Ram Sagar Yadav has been recorded before the trial court, wherein he had maintained the version of the prosecution with regard to the fact that gun shots were fired towards the deceased by the applicant and co-accused Abhishek Singh and he did not take the name of co-accused Bheem Singh. Though P.W.-4 Sandeep Singh has been declared hostile and has not supported the version of the prosecution but still evidence of informant Ram Sagar Yadav P.W.-1 is standing against the applicant. The case of the prosecution appears to be consistent with regard to the applicant and co-accused Abhishek Singh of firing gun shots towards the deceased. Thus the role of applicant is distinguishable from the role of co-accused Bheem Singh, whose bail application has been allowed. This Court had directed the trial court to submit a report with regard to the progress of the trial and vide its communication dated 28.11.2023, the trial court has submitted a report to this Court informing that till now seven prosecution witnesses have been testified and the only evidence of investigating officer had remained to be recorded and process of non bailable warrant and notice under Section 350 Cr.P.C. has been issued to him along with a letter to the Commissioner of Police/Senior Superintendent of Police, Kanpur Nagar, but the investigating officer Sunil Kumar Singh has not appeared before the trial court. Thus, the trial of the case also appears to be at a concluding stage.

15. Thus having regard to all the facts and circumstances of this case and the manner in which the offence has been committed and keeping in view the consistency of the case of the prosecution against the applicant and co-accused Abhishek Singh, I do not find any good ground to release the applicant on bail. Thus the bail application moved on behalf of applicant - **Aditya Singh** is hereby **rejected**.

16. Having regard to the information provided by learned trial court with regard to non appearance of the investigating officer Sunil Kumar Singh, who is posted at District Kanpur Nagar and against whom non bailable warrants and notice under Section 350 Cr.P.C. has also been issued by the trial court, the Commissioner of Police/Senior Superintendent of Police, Kanpur Nagar is directed to produce investigating officer Sunil Kumar Singh before the trial court on the next date of listing of the case before the trial court and there shall not be any lapse in this regard.

17. The trial court is also directed to proceed with the trial and make all out efforts to conclude the same at the earliest.

18. 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.

19. Office is directed to immediately send a copy of the instant order to the trial court concerned through the Sessions Judge concerned and to the Commissioner of Police/Senior Superintendent of Police, Kanpur Nagar, for strict compliance.

20. Case diary of the case be immediately returned to learned counsel representing the State.

Order Date :- 2.12.2023

Anupam S/-