

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10139 of 2023

Applicant :- Ankit Mishra

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

Counsel for Applicant :- Ramakar Shukla

Counsel for Opposite Party :- G.A., Dilip Kumar Mishra, Prashant Pandey

Hon'ble Mohd. Faiz Alam Khan, J.

Counter affidavit filed by the complainant is taken on record.

1. Heard Shri Ramakar Shukla, learned counsel for the accused/applicant, Shri Prashant Pandey, learned counsel appearing for complainant 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- **Ankit Mishra** for grant of bail, in Case Crime No.51/2023, under Sections 147, 148, 149, 302, 307, 120-B IPC, Police Station Kotwali Dehat, during trial.

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

4. It is further submitted that informant who has lodged the First Information Report is not the eye witness of the incident and appears to have lodged the First Information Report on the information allegedly provided by the witnesses Anurag Singh and Dinesh Mishra.

5. It is further submitted that the statement of injured, namely, Ashutosh Singh as well as Dinesh Mishra and Anurag Singh was recorded after much delay which casts a cloud of suspicion, however the whole prosecution story is false and concocted.

6. It is further submitted that identically placed co-accused persons, namely, Adarsh Tiwari @ Rishu Tiwari, Shailendra Pandey, Suraj Pandey, Aman Singh and Aditya Singh have been granted bail by this Court as well as by the Coordinate Benches of this Court, vide orders dated 7.8.2023, 27.7.2023,

4.7.2023, 7.8.2023 and 26.9.2023, respectively passed in CrI. Misc. Bail Application Nos. 8432 of 2023, 9219 of 2023, 8214 of 2023, 8909 of 2023 and 10878 of 2023 and if the statement of the injured namely, Ashutosh Singh is taken under consideration the role of co-accused persons are identical to the role of the instant applicant.

7. It is further submitted that no incriminating article or weapon of assault has been recovered from the possession or pointing of the applicant. The applicant is in jail in this case since 8.2.2023. The criminal history of 7 cases has been adequately explained in paragraph 35 to 40 of the bail application. There is no apprehension that the accused-applicant after release on bail, may flee from the process of law or may otherwise misuse the liberty.

8. Learned A.G.A., on the other hand submits that the applicant is accused of committing heinous offence, therefore he is not entitled to be released on bail.

9. Shri Prashant Pandey, learned counsel appearing for complainant/ informant submits that it is a case where one person has been done to death and one is severely injured and role of assault has been assigned to the instant applicant and thus, he is not entitled to be released on bail.

10. Having heard learned counsel for the parties and having perused the record, it is transpired that admittedly the First information Report of the case was not lodged by any eye witness and he appears to have lodged the FIR on the basis of information provided by some persons who are claiming themselves to be the eye witnesses of the incident. The star witness of this Crime appears to be Ashutosh Singh who has taken the name of the instant applicant, however, his statement was recorded after more than two months of the incident and he has assigned identical role to the applicant as well as to the others, namely, Adarsh Tiwari @ Rishu Tiwari, Shailendra Pandey, Suraj Pandey and Aditya Singh and thus the role of the applicant is identical with those who have been granted bail by this Court as well as by the Coordinate Benches of this Court. Nothing has been brought in the knowledge of this Court which may suggest that bail orders by which the identically placed co-accused persons have been granted bail has been challenged at any higher forum or has been cancelled by the same Court. Criminal history of 7 cases has been adequate explained. The applicant in jail in this case since 8.2.2023. His presence may be secured before the trial court by placing adequate conditions.

11. Keeping in view the nature of the offence, evidence,

complicity of the accused, severity of punishment, submissions of the learned counsel for the parties and without expressing any opinion on the merits and demerits of the case, I am of the considered view that applicant has made out a case for bail. The bail application is **allowed**.

12. Let the applicant- **Ankit Mishra** involved in the aforesaid case be released on bail on furnishing a personal bond with two sureties in the like amount to the satisfaction of the court concerned subject to following conditions:-

(i) The applicant shall not tamper with the prosecution evidence by intimidating/pressurizing the witnesses, during the investigation or trial.

(ii) The applicant shall cooperate in the trial sincerely without seeking any adjournment.

(iii) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

13. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

14. Identity, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

15. Observations made herein-above are only for the purpose of disposal of bail application and the same shall not have any bearing on the trial of the case.

Order Date :- 31.10.2023

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