

Court No. - 28

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10481 of 2023

Applicant :- Vishnu Prabhakar Mishra Alias Aman Mishra

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

Counsel for Applicant :- Ravindra Shukla

Counsel for Opposite Party :- G.A.,Ajay Madhavan,Piyush Agnihotri

Hon'ble Mrs. Jyotsna Sharma,J.

01. Heard Shri Ravindra Shukla, learned counsel for applicant and Sri Asif Khan, learned A.G.A. for the State.

02. The present bail application has been filed by the applicant seeking bail in case crime no.65 of 2023, under Sections 302, 307, 504, 506 and 120-B I.P.C., P.S. Kundwar, District Sultanpur.

03. As per version of the F.I.R.,on account of old enmity, two named persons Preetam Pandey, Abhay Yadav and a few unknown persons, who were lying in wait, attacked Dharmendra Nishad with the arms which they carried with them. Dharmendra Nishad was shot on his abdomen. He died later on. Another person Chhullu Nishad was shot at and he sustained firearm injury on his hand. When the attention of the co-villagers were attracted on the hearing of commotion and noise, they fled away firing on them.

04. The counsel for the applicant submits as below:-

(i) The applicant is not named in the F.I.R.

(ii) His name for the first time came into light, on the basis of statement given by injured Arjun Nishad alias Chhullu Nishad. In his statement under Section 161 Cr.P.C. he has assigned merely role of exhortation to the present applicant. He has not said that applicant accused was one of the assailants who fired at the injured person.

(iii) The applicant is in custody since 06.03.2023 i.e. more than seven months now.

(iv) He has no criminal history and that he has been implicated afterwards in a well thought out manner with ulterior motive.

05. The application for bail is opposed by learned A.G.A.. He submits that though the applicant has not been named in the F.I.R. but he was later named by the injured. It is conceded that his name has come after two months of the incident and that he has been assigned a role of exhortation only.

06. I went through the contents of the F.I.R., the statement given by the witnesses including the lone injured who survived. The F.I.R. as well as statement under Section 161 Cr.P.C. do not say that the applicant had any role in firing upon the deceased or the injured person. Taking into account

all the facts and circumstances of the case, as well as the period of custody, absence of any previous criminal history and all the attending facts and circumstances of the case I find it a fit case for bail.

07. Let applicant - Vishnu Prabhakar Mishra Alias Aman Mishra be released on bail in the aforesaid Case Crime Number on his furnishing personal bond and two reliable sureties each of the like amount to the satisfaction of the court concerned subject to following conditions:-

(i) The applicant shall not temper with evidence/witnesses.

(ii) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(iii) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) framing of charge and (ii) recording of statement under Section 313 Cr.P.C. without exception.

08. It is made clear that the observations made in this order are limited to the purpose of determination of this bail application and will in no way be construed as an expression on the merits of the case. The trial court shall be absolutely free to arrive at its independent conclusions on the basis of evidence led unaffected by anything in this order.

Order Date :- 16.11.2023

Asha