

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11323 of 2023

Applicant :- Kamruddin

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

Counsel for Applicant :- Anoop Kumar Upadhyay, Amar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh, J.

1. Heard Shri Amar Singh, learned counsel for the applicant, Shri G.D. Bhatt, learned AGA-I for the State and perused the record.

2. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.06 of 2000, under Sections 302, 201 I.P.C., Police Station Lalia, District Balrampur.

3. It is contended by learned counsel for the applicant that FIR was lodged by complainant, who is uncle of the deceased. He has stated in the FIR that his nephew had gone towards the western side of the village in the field of Arhar at about 4:30 in the evening, there the co-accused persons namely Mobin, Goli along with the applicant were searching Nilgai for hunting. When they reached to the field of Arhar crops, there was one gun fire which was witnessed by Ram Ujagar and Jagdish and they ran away from the place but till evening, his nephew did not return back and then he came to know that his nephew Daya Shankar died due to fire which he sustained while the accused and other applicants were hunting the Nilgai. Thereafter, he lodged FIR under sections 304 A IPC on 15.1.2000.

4. The applicant surrendered before the court below on 19.1.2000 and bail was granted under Sections 304 A and 201 IPC. Thereafter, matter was investigated and Section 302 IPC was invoked and applicant and co-accused filed Writ Petition No.3720 (M/B) of 2000 in which arrest was stayed. Charge sheet was filed therefore, the petition became infructuous. Charge sheet was filed in the court but no process was issued by the court. However, when the process was issued by the lower court on 18.1.2023, the petitioner challenged the said charge sheet by filing Application under section 482 Cr.P.C. No.3201 of 2023 which was disposed of with a direction that applicant will surrender before Court below within 30 days for the 30 days, the impugned order of Nonailable warrant was stayed. In pursuance of direction issued by this court the applicant surrendered but his bail application was rejected and the applicant is languishing in jail since 31.07.2023.

5. Learned counsel has invited attention of this Court towards the statement of complainant recorded under Section 161 Cr.P.C. in which he has stated that fire was shot by co-accused Goli. Thus, after looking to the statement of 161 Cr.P.C., it is clear that fire was not shot by the applicant. The post mortem report indicates that there is one gun shot having exit wound therefore, the same cannot be attributed to the applicant, the same has already been assigned to co-accused Goli and the case of the applicant is distinguishable from the case of co-accused Goli. He has further submitted that at the utmost, the case would fall under section 304 IPC Part II because there is no intention or motive to commit the crime rather it appears that the applicant and other co-accused were hunting and this incident took place unfortunately.

6. Learned counsel has further submitted that co-accused Mobin having similar role has been granted bail on 14.03.2000 in Criminal Misc. Case no. (Bail) 1010 of 2000. The bail order is annexure 6. The applicant has no criminal history. The applicant is in jail since 31.07.2023.

7. Learned AGA opposed the prayer for bail and submitted that the applicant was involved in commission of offence, therefore, it is not a fit case for grant of bail.

8. Considering the over all facts and circumstances of the case, considering the argument that main role of firing has been assigned to co-accused Goli, argument that there is only single gun shot injury of entry wound ; argument that applicant has not been assigned role of firing; argument that co-accused Mobin having similar role has been granted bail by this Court therefore, I am of the opinion that the applicant is entitled to be released on bail.

9. Let the applicant, **Kamruddin** be released on bail in the above case crime number on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of Court concerned with the following conditions :-

(i) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(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) In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation

under Section 82 Cr.P.C. is issued and the applicant fails to appear before the court on the date fixed in such proclamation, then the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

(iv) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

10. 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 :- 24.11.2023

Pks