

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11978 of 2023

Applicant :- Hemant Kashyap

Opposite Party :- State Of U.P. Thru. Its Secy. Home Govt. Of U.P. At Lko.

Counsel for Applicant :- Sanjay Kumar Trivedi, Rajneesh Sharma

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Counter affidavit filed by the State is taken on record.
2. Heard Shri Virendra Singh, holding brief of Shri Rajneesh Sharma, learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.
3. This bail second application has been moved by the accused/applicant- **Hemant Kashyap** for grant of bail, in Case Crime No.413 of 2021, under Sections 147, 148, 149, 307, 506/34, 427, 302, 117 I.P.C., Sections 3/4 of the Explosive Substance Act and Section 7 of the Criminal Law (Amendment) Act, Police Station-Majhola, District-Moradabad, during trial as his first bail application has been rejected vide order dated 23.12.2022 passed in Criminal Misc. Bail Application No.15262 of 2022 by a Coordinate Bench of this Court. The Hon'ble Judge, who has rejected first bail application of the applicant, has now been transferred to some other high court.
4. 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.
5. It is further submitted that case of the prosecution as is emerging from the F.I.R. is to the tune that co-accused Shiva Gupta has pressurized the informant to indulge into the trade of trafficking of firearms, however, he refused and thereafter he several times pressurized him to work with him and on his refusal became inimical and on 05.06.2021 at about 6-6:30 pm. when the informant was going with his friends, the accused persons named in the F.I.R. along with 10-12 unknown persons started assaulting them with crude bomb and accused Aman had fired with a country-made pistol whereon Dev Kashyap got

serious injuries and succumbed to the same while under treatment. Postmortem of the deceased would reveal that the deceased Dev Kashyap had sustained multiple injuries of the nature of laceration and abrasions and cause of death has been ascertained due to cranio-cerebral damage as a result of blunt force impact to the head. Other two injured namely Veenu and Golu have also sustained injuries.

6. Highlighting the above facts, it is vehemently submitted on behalf of the applicant that first bail application of the applicant was rejected on 23.12.2022 and thereafter the statement of star witnesses of this crime namely P.W.-1 Veenu and P.W.-3 Gulo (injured witnesses) and independent witness P.W.-2 Satish have been recorded, however, none of these witnesses have supported the prosecution story as stated in the F.I.R. as well as in the statement of the prosecution witnesses.

7. It is vehemently submitted that since the star witnesses of the crime have not supported the version of the prosecution, it would not be possible for the trial court to convict the applicant. It is also submitted that identically placed co-accused persons of the alleged crime, namely, Aman Thakur and Adarsh @ Arun @ D Max have been released on bail by the Coordinate Bench of this Court, vide order dated 28.08.2023 passed in Criminal Misc. Bail Application Nos.20102 of 2023 and 30297 of 2023, respectively.

8. It is next submitted that applicant is in jail in this case since 17.06.2021 and having regard to the pace with which the trial is going before the trial court, the same is not going to conclude in near future and before involvement of the applicant in this case, he was not having any criminal history and after involvement of the applicant in this case, a case pertaining to Gangster Act has been slapped against him and bail in that case would only be moved after grant of bail in this case, charge-sheet in this case has already been submitted and there is no apprehension that after being released on bail the applicant may flee from the course of law or may otherwise misuse the liberty.

9. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that the applicant has committed an heinous offence and having regard to the material/evidence available against the applicant, he is not entitled to be released on bail, but could not controvert the other factual submissions made by learned counsel for the applicant.

10. Having heard learned counsel for the parties and having perused the record, it is evident that first bail application of the applicant was rejected on 23.12.2022 and thereafter statement

of two prosecution witnesses namely P.W.-2 Satish and P.W.-3 Golu has been recorded before the trial court. The statement of P.W.-1 Veenu was recorded on 13.10.2022. All these witnesses have not supported the version of the prosecution as was set up in the F.I.R. as well as in the statement of prosecution witnesses including the injured witnesses. Identically placed co-accused persons of the alleged crime, namely, Aman Thakur and Adarsh @ Arun @ D Max have been released on bail by the Coordinate Bench of this Court and nothing has been brought before this Court, which may suggest that the bail orders, whereby the co-accused persons have been granted bail, have been challenged at any higher forum or has been cancelled by the same Bench. Thus there appears substantial change in the circumstances since rejection of first bail application of the applicant. Charge-sheet in this case has already been filed. Applicant is in jail in this case since 17.06.2021. Criminal history of the applicant has been adequately explained. The presence of the applicant could be secured before the trial court by placing adequate conditions.

11. Having regard to the overall facts and circumstances of the case and 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 of the case, I am of the considered view that applicant has made out a case for bail. The bail second application is thus **allowed**.

12. Let the accused/applicant- **Hemant Kashyap** involved in above-mentioned case, be released on bail on his 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 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.

Order Date :- 30.10.2023

Anupam S/-