

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12350 of 2023

Applicant :- Manish Yadav Alias Kallu

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

Counsel for Applicant :- Brij Mohan Sahai

Counsel for Opposite Party :- G.A.,Mahesh Kumar,Sanjeev Kumar Dwivedi

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard Shri Brij Mohan Sahai, learned counsel for the applicant, learned A.G.A. for the State as well as Shri Mahesh Kumar, learned counsel for the informant/complainant and perused the record.

2. This bail application has been moved by the accused/applicant- **Manish Yadav Alias Kallu** for grant of bail, in Case Crime No.30 of 2023, under Sections 147, 148, 149, 302 I.P.C., Police Station Musafirkhana, District Amethi, 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 the applicant was not named in the F.I.R. and the complicity of the applicant in this case has been shown only on account of suspicion and apprehension while there is no clinching evidence or material collected by the investigating officer against the applicant.

5. It is also submitted that the applicant was not at all involved in the political rivalry, which was existing between the family of deceased persons and one Jalaluddin Khan, who has been named as an accused person and it is alleged that on account of this enmity, the whole conspiracy has been hatched by Jalaluddin Khan and he had hired one Rahul Yadav and the role of the instant applicant is to the tune that he at the relevant point of time was living in Punjab and he has provided firearms for commission of the offence.

6. It is vehemently submitted that there is no direct evidence or to say any evidence in support of the fact that the applicant was

part and parcel of any conspiracy. The observation of the Incharge, Surveillance Cell has been placed against the applicant as an evidence, wherein he had opined that the applicant along with other co-accused persons were deputed by Rahul Yadav to do recce of Suresh Yadav and Brijesh Yadav and also that he was present along with Rahul Yadav, Dabbu Yadav, Mukesh Yadav, Ankit Yadav, Abhay Yadav @ Lala and Salman in the basement of the shop of Hariphool Shukla, where the planning to eliminate the deceased persons was hatched and also that some rupees were also transferred in the bank account of the applicant by Rahul Yadav and Sanjay Yadav, however, no monetary transaction has been collected, which had ever occurred between any of the accused persons and thus involvement of the applicant is only on the basis of hypothesis, suspicion and apprehension.

7. It is next submitted that applicant is in jail in this case since 03.03.2023 and criminal history of three cases is being alleged against the applicant, however, the same has been explained in para no.23 of the rejoinder affidavit. 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.

8. 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.

9. Shri Mahesh Kumar, learned counsel for the informant/complainant vehemently submits that the applicant is part and parcel of a well knit conspiracy and in pursuance of the said conspiracy, his job was to provide firearms to the main executors of the crime and it is in pursuance of the same, he has supplied firearms to the actual shooters and by using said firearms, death of two innocent persons have been caused.

10. It is further submitted that the applicant is brother of main assailant Rahul Yadav, who is a shooter and the applicant and other accused persons were acting in a coordinated manner and it is in execution of the same the deceased persons have been done to death. It is also highlighted that the applicant was part and parcel of groups formed by him and other accused persons on various social media platforms and the said groups were used for supply of illegal sophisticated arms and thus having regard to the fact that two innocent persons have been done to death, the applicant is not entitled to be released on bail.

11. Having heard learned counsel for the parties and having perused the record, it is evident that in the F.I.R., which has been lodged by Durgesh Yadav, it is alleged that on 27.02.2023 at about 07:00pm his uncle Suresh Yadav along with his brother Brijesh Yadav were returning home from their bolero car, however, two motorcycles without registration number plates intercepted them at Dadara Road and Jalaluddin Khan, Moinuddin Khan, Rahul Yadav, Sanjay Yadav, Basir Khan and two unknown persons started indiscriminating firing and also hurled crude bombs, whereby they both sustained injuries and died. Statement of the informant and other prosecution witnesses namely Shubham Verma, who is shown to be sitting with the deceased persons in the bolero car, Shiv Bahadur, Ravi Kumar Yadav and Pawan Tiwari was recorded by the investigating officer. Shubham Verma is the witness, who claimed himself to be sitting with both the deceased persons in the bolero car and had only identified Rahul Yadav as the assailant. Other witnesses have apprehended that the offence has been committed in furtherance of a conspiracy hatched by Jalaluddin Khan and executed by Rahul Yadav and other sharp shooters. One witness namely Pawan Tiwari has taken the name of the applicant to the tune that the applicant in association with other accused persons was supplying arms to other accused persons for commission of the offence.

12. The investigating officer has also recorded statement of the Incharge, Surveillance Cell, who has stated that a conspiracy was hatched by Jalaluddin Khan to eliminate the deceased persons and he contacted Rahul Yadav, who asked him to provide money and arms then Jalaluddin Khan asked Sanjay Yadav and applicant to provide arms and at that time the applicant and co-accused Sanjay Yadav were residing in Punjab and they were connected through Whatsapp, Instagram and Facebook. It has also surfaced that a contract to kill was given by co-accused Jalaluddin Khan to co-accused Rahul Yadav for Rs.6 lakhs and two lakhs were given as advance according to the plan and Rahul Yadav has deputed his brother Sanjay Yadav and applicant and another Sanjay Yadav (Pradhan Sambhawa) as well as Basir Khan and Hariphool Shukla to keep a track of the location of the deceased persons.

13. It is also the case of the prosecution that Basir Khan and Hariphool Shukla were informing Sanjay Yadav and applicant through Instagram about the whereabouts of the deceased persons and Sanjay Yadav and applicant were passing this information to Rahul Yadav. It is also stated that on 26.02.2023 Rahul Yadav has asked his shooters namely Dabbu Yadav, Mukesh Yadav, Ankit Yadav, Abhay Yadav @ Lala and Salman to assemble in the basement of the shop of Hariphool Shukla

and on 27.02.2023, however, it was Basir Khan, who had given the information with regard to the movement of the deceased persons on the fateful day and in execution of the same, the deceased persons are shown to have been killed.

14. The postmortem report of deceased Suresh Yadav would reveal that five entry wounds of firearms have been found along with one exit wound and the cause of death has been shown as hemorrhagic shock due to ante mortem firearm injuries and in the postmortem report of the deceased Brijesh Yadav, four entry wounds have been found at various places of the person and his death is also shown to be the result of hemorrhagic shock as a result of ante mortem firearm injuries.

15. Another statement of the Incharge, Surveillance Cell was recorded by the investigating officer, wherein he stated that co-accused Sanjay Yadav, who is brother of Rahul Yadav, was sending money to the bank account of the applicant for supplying of arms and also that Rahul Yadav had contacted the applicant and from mobile phone recovered at the time of arrest of Sanjay Yadav it was found that the applicant was demanding money from Rahul Yadav and also his adhar card. Rahul Yadav appears to have been arrested and has confessed his guilt and has stated that he had asked the applicant to provide logistics and the applicant was connected with them on Instagram, Whatsapp and Facebook, however, he also stated that the information with regard to movement of the deceased persons was given by Basir Khan on 27.02.2023.

16. It is also evident that the motive was available to Rahul Yadav and Jalaluddin Khan as Jalaluddin Khan is stated to have long standing enmity with the deceased persons as mother of co-accused Rahul Yadav has contested election against the mother of one of the deceased persons. Some screen shots of mobile phone have been placed on record by the State in its counter affidavit, however, the same are pertaining to receipt of copy of adhar card of main accused Rahul Yadav and transfer of Rs.800/- only and the same by itself may not be sufficient to infer that the applicant is part and parcel of a large scale conspiracy. Admittedly there appears no evidence with regard to transfer of money by anyone in the bank account of the applicant for purchase of any firearm and no evidence of supplying any firearm to any of the accused persons by the applicant has surfaced. There is no evidence with regard to the fact that the applicant had supplied any information with regard to the location of the deceased persons to co-accused Sanjay Yadav or Rahul Yadav as is evident that on the fateful day information pertaining to the location of the deceased persons was given by co-accused Basir Khan to co-accused Rahul

Yadav. There is also no evidence that any of the accused persons has provided the location of the deceased persons to the applicant. It has come in the statement of the co-accused Rahul Yadav that he was annoyed and inimical towards the deceased persons as he was sent to jail in a murder case, which was filed at the behest of the deceased Suresh Yadav. No chat record of the applicant with any of the accused persons has been brought on record through counter affidavit. Criminal history of three cases is being alleged against the applicant, however, the same has been explained in para no.23 of the rejoinder affidavit. Admittedly the applicant was not involved in actual shooting and his complicity is only with regard to the hatching of conspiracy. It is also admitted that the information on the fateful day with regard to movement of the deceased persons was given by co-accused Basir Khan to Rahul Yadav. The defence of the applicant appears to be that only on account of his association with the other accused persons, his name has been dragged into this case. Thus, in the considered opinion of this Court, having regard to all the facts and circumstances of the case, facility of bail may be extended to the applicant. Charge-sheet in this case has already been filed. Applicant is in jail in this case since 03.03.2023 and criminal history of three cases is being alleged against the applicant, however, the same has been explained in para no.23 of the rejoinder affidavit. The presence of the applicant could be secured before the trial court by placing adequate conditions.

17. 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 application is thus **allowed**.

18. Let the accused/applicant- **Manish Yadav Alias Kallu** 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.

(iv). 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;

(v). In case, the applicant misuses the liberty of bail 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; and

(vi) 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 default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of his bail and proceed against him in accordance with law.

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

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

21. 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.

22. Case diary of the case be immediately returned to learned A.G.A.

Order Date :- 6.12.2023

Anupam S/-