

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12574 of 2023

Applicant :- Dhirendra Yadav @ Dhiru

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

Counsel for Applicant :- Ramakar Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard Shri Ramakar Shukla, learned counsel for the applicant as well as learned AGA for the State and perused the record.
2. This bail application has been moved by the accused/applicant- **Dhirendra Yadav @ Dhiru** for grant of bail, in Case Crime No. 51/2023, under Sections 147, 148, 149, 302, 307, 120B IPC, Police Station Kotwali Dehat, District Sultanpur, during trial.
3. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication and the name of the applicant has been dragged into this case only on account of previous enmity, while the applicant has not committed any offence as claimed by the prosecution.
4. It is further submitted that the informant of this case was not an eye witness of the incident and he appears to have lodged the first information report on the information allegedly provided by the witnesses Dinesh Mishra and Anurag Singh, however, both the witnesses of the F.I.R., namely, Dinesh Mishra and Anurag Singh apart from taking the name of the applicant has also named other accused persons not named in the F.I.R. and have assigned the role of firing to all the accused persons named by them.
5. It is further submitted that the witness Aditya Singh who is shown to be present with the deceased has attributed the role of firing to accused persons named in the FIR and also to Suraj Pandey @ Utkarsh Pandey and injured Ashutosh Singh, whose statement has been recorded on 13.3.2023, has assigned the role of firing to Shakti Singh @ Shaka, Rajat Singh @ Raka, Dhirendra Yadav @ Dhiru (applicant), Ankit Mishra who were all named in the FIR and to other four accused persons, namely,

Suraj Pandey @ Utkarsh Pandey, Aadarsh Tiwari @ Rishu Tiwari, Shailendra Pandey and Aaditya Singh @ Murga who were not named in the FIR.

6. It is also submitted that the statement of eye witnesses Dinesh Mishra and Anura Singh was recorded on 27.4.2023 and thus witnesses who were named in the FIR have attributed the role of firing to Shakti Singh @ Saka, Rajat Singh @ Raka, applicant and Ankit Mishra who were all named in the FIR and also to Suraj Pandey @ Utkarsh, Aadarsh Tiwari @ Rishu Tiwari, Aaditya Singh @ Murga, Shailendra Pandey and Vikash Maurya.

7. It is further submitted that only two entry wounds and two exit wounds of firearm has been found on the dead body of the deceased while the role of assault has been assigned to many persons and manner in which the incident is shown to have been occurred could not be believed on the touch stone of probability and co-accused persons, namely, Aadarsh Singh, Shailendra Pandey and Suraj Pandey were not named in the FIR but role of firing has been assigned to them by the star witnesses of the crime and also to one Ankit Mishra who was named in the FIR and also to Aman Singh, Adarsh Tiwari and Bhaskar Dubey role of firing has been assigned in the First Information Report but the eye witnesses have assigned them the role of only hatching of a conspiracy and all of them have been granted bail by this Court as well as by the Coordinate Benches of this court, vide orders dated 7.11.2023, 27.7.2023, 4.7.2023, 31.10.2023, 7.8.2023, 7.8.2023 and 17.11.2023 passed in Crl. Misc. Bail Application Nos. 13037/2023, 9219 of 2023, 8214 of 2023, 10139 of 2023, 8909 of 2023, 8431 of 2023 and 12581 of 2023, respectively, while facility of bail to one Vikash Maurya has been granted by the Sessions Court. Thus the role of the applicant is identical to the role of those who have been granted by this Court or by the Coordinate Benches of this Court.

8. It is also submitted that 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 16.5.2023 and he is not having any criminal antecedent. Charge sheet in this case has already been filed and 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.

9. Learned A.G.A., however, opposes the prayer for bail but could not dispute the other factual submissions made by the learned counsel for the accused-applicant.

10. Having heard learned counsel for the parties and having perused the record, it is transpired that admittedly the First Informant of the case was not an eye witness and he appears to have lodged the FIR on the basis of information provided by the witnesses Anurag Singh and Dinesh Mishra, who have claimed themselves to be the eye witnesses of the incident. One Aaditya Singh is also shown to be in the company the deceased. The star witness of this crime appears to be Ashutosh Singh, Anurag Singh and Dinesh Mishra who have taken the name of the instant applicant. Statement of the injured Ashutosh Singh has been recorded on 13.3.2023 about one month after the incident and he has assigned the role of firing to all the accused persons named in the FIR including the applicant and 4 others i.e. Suraj Pandey @ Utkarsh Pandey, Aadarsh Tiwari @ Rishu Tiwari, Shailender Pandey and Aaditya Singh @ Murga who were not named in the FIR. The statement of the eye witness Dinesh Mishra and Anurag Singh has been recorded on 27.4.2023 after two months of the incident and they have assigned the role of firing to applicant as well as to Rajat Singh @ Raka, Shakti Singh @ Saka, Suraj Pandey @ Utkarsh Pandey, Aadarsh Tiwari @ Rishu Tiwari, Aaditya Singh @ Murga, Shailendra Pandey and Vikash Maurya. Co-accused Aadarsh Tiwari @ Rishu Tiwari, Shailendra Pandey, Ankit Mishra, Aman Singh, Aadarsh Singh, Suraj Pandey and Bhaskar Dubey have been granted bail by this Court as well as by the Coordinate Benches of this Court, while the bail has been granted to co-accused Vikash Maurya by the Session Judge. The role of instant applicant appears to be at par while other co-accused persons granted bail while one and other witnesses the role of firing has been assigned to all the accused persons. Admittedly two firearm entry wounds have been found on the dead body of the deceased along with two exit wounds. Nothing has been brought in the knowledge of the Court which may suggest that the bail orders by which the identically placed co-accused persons have been granted bail, were challenged at any higher forum or has been cancelled by the same Court. The applicant is not having any criminal antecedent. He is in jail in this case since 16.05.2023. Charge sheet in this case has already been submitted. 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- **Dhirendra Yadav @ Dhiru** 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.

16. The case diary be immediately returned to learned AGA for the State.

Order Date :- 5.12.2023

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