

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12581 of 2023

Applicant :- Bhaskar Dubey

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

Counsel for Applicant :- Ramakar Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. On 19.10.2023, the State was given an opportunity to visualize the submissions made by learned counsel for the applicant with regard to the fact that identically placed co-accused persons have been granted bail and it was also kept open that the State, if so wish, may also file counter affidavit/objections. On 06.11.2023 this case was again adjourned and listed today.

2. Learned A.G.A. informs that he has procured complete instructions in the matter including upto date case diary of the case.

3. Heard Shri Ramakar Shukla, learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.

4. This bail application has been moved by the accused/applicant- **Bhaskar Dubey** for grant of bail, in Case Crime No.51 of 2023, under Sections 147, 148, 149, 302, 307, 120-B I.P.C., Police Station Kotwali Dehat, District Sultanpur, during trial.

5. 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.

6. It is further submitted that F.I.R. of this case has been lodged by the father of the deceased namely Karmaraj Singh implicating the applicant and other accused persons named in the F.I.R. and the role of firing on his son Gaurav Singh was assigned to all accused persons named therein. However, admittedly he is not an eye witness of the incident and appears to have lodged the F.I.R. on the information provided by Dinesh Mishra and Anurag Singh, thus the contents of the F.I.R. are

based on hearsay evidence.

7. It is further submitted that after lodging of the F.I.R., statement of another so called eye witness namely Aditya Singh was recorded, who has also supported the version of the F.I.R. and the role of firing has been assigned to the instant applicant also. It is vehemently submitted that thereafter statements of three prosecution witnesses namely Dinesh Mishra, Anurag Singh and Ashutosh Singh (injured witness) were also recorded and all these witnesses while introducing some other persons as the assailants have assigned the role of only conspiring to the instant applicant as well as to Aman Singh, Adarsh Singh and Anshuman Singh.

8. It is vehemently submitted that in the whole case diary, there is no iota of evidence with regard to hatching of any conspiracy by the applicant. It is also highlighted that identically placed co-accused persons of the alleged crime, namely, Aman Singh and Adarsh Singh @ Akash Raghuvanshi, to whom also the role of firing and subsequently of hatching a conspiracy has been assigned in the F.I.R. as well as in the statement of Aditya Singh, have been released on bail by the Coordinate Bench of this Court, vide orders dated 07.08.2023 and 07.11.2023 passed in Criminal Misc. Bail Application Nos.8909 of 2023 and 13037 of 2023, respectively.

9. It is next submitted that applicant is in jail in this case since 09.08.2023. Though criminal history of six cases have been alleged against the applicant, however, in all these cases, he has been granted bail and criminal history of the applicant has been adequately explained in para nos.38 to 43 of the bail application. 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.

10. 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.

11. Having heard learned counsel for the parties and having perused the record, it is evident that informant of this case has claimed to have lodged the F.I.R. on the information provided by witnesses Dinesh Mishra and Anurag Singh so prima facie it appears that informant was not the eye witness of the incident. The eye witnesses of the incident is shown to be one Aditya

Singh, to whom it is alleged that he was kidnapped by the accused persons and Ashutosh Singh, who has claimed to have been injured in the incident and also one Dinesh Mishra and Anurag Singh. While Aditya Singh has supported the version of the prosecution as stated in the F.I.R. and assigned the role of firing to the instant applicant also, other three accused persons including the star witness of the crime namely injured Ashutosh Singh has assigned the role of only hatching a conspiracy to the applicant. Various submissions have been raised by learned counsel for the applicant in order to canvass that the story as cooked up by the prosecution could not be believed and the role of applicant has been changed from firing to hatching of a conspiracy and the case of the prosecution has become doubtful. It also appears to be an admitted situation that identically placed co-accused persons of the alleged crime, namely, Aman Singh and Adarsh Singh @ Akash Raghuvanshi have been released on bail by the Coordinate Bench of this Court and nothing has been brought in the knowledge of this Court, which may suggest that the bail orders, whereby the facility of bail has been granted to the co-accused persons, have been challenged at any higher forum or have been cancelled by the same Bench. Charge-sheet in this case has already been filed. Applicant is in jail in this case since 09.08.2023. 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.

12. 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**.

13. Let the accused/applicant- **Bhaskar Dubey** 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 make any contact with any of the prosecution witnesses including the informant.

(ii) The applicant shall not tamper with the prosecution evidence by intimidating/pressurizing the witnesses, during the investigation or trial.

(iii) The applicant shall cooperate in the trial sincerely without

seeking any adjournment.

(iv) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

(v). 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;

(vi). 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

(vii) 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.

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

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

16. 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 :- 17.11.2023

Anupam S/-