

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14069 of 2023

Applicant :- Sumit Kumar Mishra

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

Counsel for Applicant :- Rama Raman Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Learned A.G.A. informs that he has procured complete instructions in the matter including upto date case diary of the case.
2. Heard learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.
3. This bail application has been moved by the accused/applicant- **Sumit Kumar Mishra** for grant of bail, in Case Crime No.65 of 2023, under Sections 302, 307, 504, 506, 120-B, 34 I.P.C., Police Station Kurwar, District Sultanpur, during trial.
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 the applicant was not named in the F.I.R. and his complicity has surfaced in the statement of alleged injured witness namely Arjun Nishad @ Chhullu Nishad, who has allegedly sustained injuries in the incident and he has simply shown the presence of the applicant at the spot as a pillion rider of another motorcycle while the role of giving exhortation has been assigned to co-accused Abhay Yadav and of firing towards the deceased has been assigned to main accused of the crime namely Pritam Pandey.
6. It is also submitted that other witnesses, who claimed themselves to be present at the spot and witnessed the incident, have also claimed to have seen the accused persons running away from the scene of crime and they have also assigned the role of firing to main accused Pritam Pandey.

7. It is vehemently submitted on behalf of the applicant that presence of the applicant at the spot without any overact may not amount to any common intention and in absence of overact of the applicant it appears that name of the applicant has been dragged into this case because of his association with other accused persons.

8. It is further submitted that identically placed co-accused person of the alleged crime, namely, Vishnu Prabhakar Mishra @ Aman Mishra has been released on bail by the Coordinate Bench of this Court vide order dated 16.11.2023 passed in Criminal Misc. Bail Application No.10481 of 2023.

9. It is next submitted that applicant is in jail in this case since 06.03.2023 and he is not having any criminal history, 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 F.I.R. of this case has been lodged by one Ram Surat Nishad on 05.03.2023 at Police Station Kurwar, District Sultanpur alleging therein that on 04.03.2023 at about 06:00pm, the deceased along with injured witness namely Arjun Nishad @ Chhullu Nishad was returning on a motorcycle to their home and Arjun Nishad @ Chhullu Nishad was the pillion rider of the motorcycle. It is further alleged that the named accused persons Pritam Pandey, Abhay Yadav and some other unknown persons intercepted the deceased and injured witness Arjun Nishad @ Chhullu Nishad and had fired towards them by which the deceased Dharmendra Kumar Nishad and injured Arjun Nishad @ Chhullu Nishad got injuries. Arjun Nishad @ Chhullu Nishad claimed to have been injured in the incident and he has assigned specific role of firing to Pritam Pandey and exhortation (lalkarana) to co-accused Abhay Yadav and also that both these accused persons were sitting on a motorcycle together while the presence of the applicant and other co-accused namely Vishnu Prabhakar Mishra @ Aman Mishra is also shown on another motorcycle and the role of exhortation has also been assigned to them. The other witnesses have also assigned the role of firing to main accused Pritam Pandey while running away from the scene of

crime. Admittedly in the statement of the injured Arjun Nishad @ Chhullu Nishad, no weapon has been assigned to the applicant. The role of instant applicant is at par with the role of Vishnu Prabhakar Mishra @ Aman Mishra in the commission of alleged crime, who has been granted bail by a Coordinate Bench of this Court and nothing has been brought in the knowledge of this Court that the said order, whereby the facility of bail has been extended to co-accused Vishnu Prabhakar Mishra @ Aman Mishra, has been challenged at any higher forum or has been cancelled by the same Court. Charge-sheet in this case has already been filed. Applicant is in jail in this case since 06.03.2023 without any previous criminal history. 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- **Sumit Kumar Mishra** 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.

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 :- 5.12.2023
Anupam S/-