

Court No. - 41

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42019 of 2018

Applicant :- Abhishek @Chhura

Opposite Party :- State Of U.P.

Counsel for Applicant :- Brijesh Sahai, Ram Awadh Mishra

Counsel for Opposite Party :- G.A., Narendra Kumar Tiwari, Radhey Shyam Shukla

Hon'ble Harsh Kumar, J.

Heard Shri Sidharth Mishra, Advocate holding brief of Shri Brijesh Sahai learned counsel for the applicant, Shri Radhey Shyam Shukla, learned counsel for the first informant, learned A.G.A. and perused the record.

Learned counsel for the applicant contended that the applicant has been falsely implicated in the F.I.R. lodged after 45 minutes of the alleged incident; that as per averments made in F.I.R. on 6.6.2018 at about 3.00 p.m. when the first informant and other were returning to Bargadh from the office of C.O., Mau reached ahead of main gate of Tehsil, the applicant along with 8 named and 8 - 10 unnamed persons armed with fire arms were hiding there since before in one black and one white vehicle and started indiscriminate firing in which a fire hit Durgesh who was sitting by the side of driver in his head and Ankit also sustained injuries; that post mortem report of deceased shows single gun shot wound of entry and exit and there is no other mark of bullet having been found on the spot or the vehicle of first informant, and no empty cartridge was recovered from the spot, that injury report of Ankit shows that he sustained injury in his right eye due to breaking window glass of their Car and glass particles were recovered from his eye; that in his statement under section 161 Cr.P.C. first informant and injured claiming themselves to be eye witnesses, have not assigned any specific role of firing to the applicant and there is no whisper in the statement of other witnesses that the deceased was hit in his head by the fire made by applicant; that another eye witness Vijay in his statement under Section 161 Cr.P.C. has assigned the applicant only with the role of exhortation; that the applicant may not

considered to be the author of fatal injury sustained by deceased Durgesh; that the applicant had no motive to cause death of deceased and he even did not participate in the incident in question; that the applicant has explained his criminal history in paragraph nos. 24 and 25 to the affidavit in support of the bail application that the applicant has no criminal history; that the applicant undertakes that he will not misuse the liberty of bail; that the applicant is in custody since 11.6.2018.

Learned A.G.A. and learned counsel for the first informant vehemently opposed the prayer of bail and contended that the applicant and his associates attempted on the life of Durgesh and others who were in side the vehicle in pre-planned manner due to the presence of mind of the driver of vehicle of first informant, who turned the vehicle inside the police station the life of other passengers of vehicle could be saved.

Upon hearing learned counsel and perusal of record and considering the complicity of accused, severity of punishment; as well as totality of facts and circumstances, at this stage without commenting on the merits of the case, I find it a fit case for bail.

Let the applicant Abhishek @Chhura be released on bail in Case Crime No.85 of 2018, under Sections 147, 148, 149, 307, 302/34 I.P.C. & 7 Criminal Law Amendment Act, P.S. Mau, District Chitrakoot, on furnishing a personal bond and two sureties each in the like amount to the satisfaction of magistrate/court concerned, subject to following conditions:-

(i) The applicant will co-operate with the trial and remain present personally on each and every date fixed for framing of charge, recording of evidence as well as recording of statement under Section 313 Cr.P.C. or through counsel on other dates and in case of absence without sufficient cause, it will be deemed that he is abusing the liberty of bail enabling the court concerned to take necessary action in accordance with the provisions of Section 82 Cr.P.C. or Sections 174A and 229A I.P.C.

(ii) The applicant will not tamper with the prosecution evidence and will not delay the disposal of trial in any manner whatsoever.

(iii) The applicant will not indulge in any unlawful activities.

The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail and send the applicant to prison.

Order Date :- 30.11.2018

VS