

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 28263 of 2022

Applicant :- Shivam Tiwari

Opposite Party :- State of U.P.

Counsel for Applicant :- Lakshmi Kant Pandey, Naveen Kumar Yadav, Sudhir Kumar Agarwal, Sunil Kumar Pandey

Counsel for Opposite Party :- G.A., Neelam Pandey, Rajeev Giri, Rajnish Kumar Pandey

Hon'ble Manish Mathur, J.

1. Heard learned counsel for applicant, learned Additional Government Advocate appearing on behalf of State, learned counsel for the complainant and perused the record.
2. This first bail application has been filed with regard to Case Crime No.122 of 2022, under Sections 147/323/452/308 IPC, Police Station Muhrabadshahpur, District Jaunpur.
3. Counter affidavit filed today by learned counsel for the complainant is taken on record.
4. As per contents of FIR, the incident is said to have been occurred on 19.5.2022 in which four persons including the applicant are said to have entered into the house of the informant and attacked with sticks leading to grievous injuries.
5. Learned counsel for applicant submits that the applicant has been falsely implicated in the charges levelled against him which is only on account of earlier enmity due to dispute pertaining to immovable property for which civil litigation is already pending. Even as per the contents of FIR and statement of the injured recorded under Section 161 Cr.P.C., a general allegation of causing hurt has been levelled against the applicant without any specific assertion as to his role in the injury caused. Apart from a particular injury resulting in fracture in the head, other injuries sustained by the informant are simple in nature.
6. Learned A.G.A. appearing on behalf of State as well as learned counsel for the complainant have opposed bail application with the submission that the injury report clearly makes out the grievousness of the injury suffered by the first informant. It is further submitted that it is an admitted fact that the parties are litigating in the civil court with regard to dispute regarding immovable property.
7. Considering aforesaid submissions and on perusal of material on record, it appears that only general role has been assigned to

the applicant of causing injury to the first informant. There is no assertion with regard to the person who has inflicted the grievous injury. The applicant has no previous criminal history.

8. Hon'ble the Supreme Court in **Sanjay Chandra v. Central Bureau of Investigation**, reported in (2012) 1 SCC 40 has specifically held that bail is to be a norm and an under-trial is not required to be in jail for ever pending trial. Relevant paragraphs of the judgment are as under :-

"21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty."

"27. This Court, time and again, has stated that bail is the rule and committal to jail an exception. It has also observed that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution."

9. Looking to the nature of allegations levelled against the applicant and submission made in the bail application, without expressing any opinion on the merits of case and considering the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence, particularly since no reasonable apprehension of tampering with the witnesses has been alleged, prima facie, this Court finds, the applicant is entitled to be released on bail in this case.

10. Accordingly bail application is allowed.

11. Let applicant Shivam Tiwari involved in the aforesaid case crime be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice:-

(i) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(ii) 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.

(iii) In case, the applicant misuses the liberty of bail during trial 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.

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

Order Date :- 31.8.2022

Gaurav