

Court No. - 79

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 49173 of 2021

Applicant :- Akash Rajput

Opposite Party :- State of U.P.

Counsel for Applicant :- Sushil Dubey

Counsel for Opposite Party :- G.A.

Hon'ble Vikas Budhwar,J.

Supplementary affidavit filed is taken on record.

Heard Sri Sushil Dubey, learned counsel for the applicant, and Sri Avaneesh Kumar Shukla, the learned AGA for the State.

This bail application purported to be under Section 439 of the Cr.P.C. has been moved on behalf of applicant- **Akash Rajput** for enlarging him on bail in Case Crime No.846 of 2021, under Section 307 IPC, registered at Police Station- Modinagar, District- Ghaziabad.

The bail application so preferred by the applicant has been rejected by the court below on 27.10.2021.

Learned counsel for the applicant has argued that a first information report has been lodged by Smt. Shashibala against the applicant before P.S. Modinagar, District Ghaziabad being FIR no.0846 on 29.8.2021 at 11:00 hours under Section 307 IPC relatable to commission of offence with an allegation that the complainant along with her son Deepak Gupta on unfateful day i.e. 28.8.2021 at 7.30 p.m. was coming to her house and at that point of time the applicant along with three nominated accused had heated conversation with the son of the complainant pursuant whereto the son of the complainant entered into a liquor model shop and thereafter at 8.00 p.m. on the same day, the applicant along with the three nominated accused assembled outside the liquor model shop and when the son of the complainant came outside then gunshot injuries

were resorted to pursuant whereto son of the complainant sustained injuries and the same was also witnessed by others.

Learned counsel for the applicant has drawn the attention of this Court towards page 28 of the bail application which happens to be the statement of the injured wherein for the very first time, the applicant has been assigned the role of resorting to use of gun for extending gun shot injuries to the complainant. He has further drawn the attention of this Court towards the fact that in the first information report only general allegations have been sought to be levelled and no specific role has been assigned to the applicant, however for the very first time in the statement of the injured the name of the applicant has been taken with relation to the fact that the applicant resorted to gun shot injuries. He has further argued that the entire story so sought to be propagated is bundle of lies particularly in view of the fact that the injured did not have the intention to pay back the money which he has taken as financial assistance without any collateral security.

According to learned counsel for the applicant when the applicant was pressing hard for remittance of the said money back to him then the said story is being sought to be implanted. He has further argued that even the medical report so procured by the injured is from a private hospital and wherein the words dangerous to life have been sought to be incorporated. He has further argued that entire incident is referable to district Ghaziabad whereas the medical report is being sought to be obtained from Meerut wherein a story has been sought to be build up that medication was done in the Meerut despite the fact that in Ghaziabad itself that there are good private hospital as well as the health centres so operated by the State Government.

Learned counsel for the applicant has further drawn the attention towards paragraph 19 so as to contend that the applicant has no criminal history and he is unnecessary languishing in jail since 29.8.2021.

Learned counsel for the applicant has further argued that certain stringent conditions be imposed while enlarging him on bail as in this regard he has drawn the attention towards supplementary affidavit filed today relatable to paragraphs 2 and 3 so as to contend that according to instructions so received by him which has been reduced in the supplementary affidavit filed today his client is ready to furnish surety of an amount of Rs.one lakh and also undertakes that he will appear before concerned police station and every Monday of the month.

Countering the said submission, the learned A.G.A. has opposed the bail while arguing that though general role has been sought to be assigned in the first information report, however a specific role of resorting to gun shot injuries has been assigned in the statement and further merely because the applicant does not possess any criminal history, the same cannot be a relevant ground for enlarging him on bail, however, in case the applicant will furnish sureties of Rs.1,00,000/- coupled with the fact the present religiously on every Monday of the month then bail may be granted to him.

Considering the submissions so advanced by the learned counsel for the parties on the question of bail, this Court *prima facie* finds that this is a fit case for grant of bail, as the criminal history has been properly explained, and applicant is languishing in jail since 29.8.2021, as also looking into the nature of acquisition, the evidence collected by the I.O, in support of the charge, gravity of offence, nature and severity of the punishment in the case of conviction, complicity of accused and all attending circumstances.

Courts have taken notice of the overcrowding of jails during the current pandemic situation (**Ref.: Suo Motu Writ Petition (c) No. 1/2020, Contagion of COVID 19 Virus in prisons before the Supreme Court of India**). These circumstances shall also be factored in while considering bail applications on behalf of accused persons.

In the light of the aforesaid discussion and without making any observations on the merits of the case, the bail application is allowed.

Let the applicant- **Akash Rajput** involved in aforesaid crime be released on bail on his furnishing a personal bond and **a heavy surety of Rs.1/- lac** with the following conditions that :-

- (i) The applicant shall visit the concerned police station on the first Monday of each month.
- (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 not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court to any police officer or tamper with the evidence.
- (vi) Identity, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.
- (vii) **The trial court concerned shall expedite the trial and the same shall be conducted on day-to-day basis as early as possible, preferably within a period of a year, without any unnecessary adjournments.**

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

Any observations made in granting bail to the applicant shall not in any way affect the learned Trial Judge in forming his independent opinion based on the testimony of the witnesses.

Taking into consideration that Covid-19 is continuing and

due to which certified copy would not be possible to be obtained by the applicant, therefore, if a copy of this order downloaded from the official website of Allahabad High Court and self attested by the counsel for the applicant is placed before the Court, the same would be entertained.

Order Date :- 25.2.2022

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