

Court No. - 71

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 35291 of 2020

Applicant :- Haseen Alias Ishu

Opposite Party :- State of U.P.

Counsel for Applicant :- Mir Sayed, Padmaker Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Manish Mathur, J.

Counter affidavit filed by learned AGA is taken on record.

Heard learned counsel for the applicant, learned A.G.A. and perused the record.

The instant bail application has been filed with a prayer to enlarge the applicant on bail in Case Crime No.362 of 2019, under Sections 147, 148, 149, 332, 353, 336, 307, 188, 427, 34, 109, 302, 120B I.P.C.; Section 3/4 Prevention of Damage to Public Property Act, 1984; Section 7 Criminal Law Amendment Act, 1944 and Section 27 Arms Act, 1959, Police Station Babupurwa, District Kanpur Nagar, during pendency of trial.

It is urged that the applicant is innocent; F.I.R. was lodged against eight nominated persons; 4000-5000 unknown persons allegedly participated in ruckus which took place on 20.12.2019 at Kanpur Nagar against the Citizen Amendment Act; four nominated co-accused, have been enlarged on bail by this Court; it is urged that initially, F.I.R. was lodged under Section 307 I.P.C., thereafter, Section 302 I.P.C. has been added; it is urged that applicant was not present at the place of occurrence; there is no motive with regard to the commission of offence; people lost lives due to indiscriminate firing caused by the assailants and by the police; there is no criminal antecedent against the applicant. The applicant is languishing in jail since 22.08.2020 and in case he is enlarged on bail he will not misuse the liberty of bail. Co-accused, namely Shahzad @ Sarfraz Alam, Pervez Alam, Mustakeem, Adil, Faizan Mumtaz, Sarwar Alam, Saiyad Abdul Hai Hashmi, Aqeel Ahmad, Mohammad Umar, Mohd Kaseem and Mohd. Jameel have been enlarged on bail by coordinate benches of this Court passed in Criminal Misc. Bail Application Nos.6241 of 2020,6228 of 2020,9138 of 2020,9615 of 2020, 14240 of 2020, 14857 of 2020,15525 of 2020, 18397 of 2020, 19416 of 2020, 19711 of 2020 and 19861 of 2020 respectively.

Learned A.G.A. opposed the prayer for bail but could not dispute the aforesaid facts as argued by the learned counsel for the applicant.

Considering the submissions advanced by learned counsel for parties and upon perusal of material available on record, it appears that the applicant has not been named in the FIR and at this stage there does not appear to be any evidence whereby the applicant could be identified as a part of mob. The previous criminal history has been explained by the applicant in the supplementary affidavit. The applicant is in jail since 22.08.2020 and it has been submitted that trial as yet has not commenced. Co-accused allegedly having similar role have been assigned by coordinate benches of this Court as indicated hereinabove.

Let the applicant ***Haseen Alias Ishu*** involved in 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 :- 1.11.2022

Subodh/-